84-1652

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No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1984

SAN FRANCISCO NEWSPAPER PRINTING COMPANY,
d/b/a SAN FRANCISCO NEWSPAPER AGENCY,
Petitioner,

v.

SAN FRANCISCO WEB PRESSMEN UNION, NO. 4,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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Dated: April 18, 1985

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128/p

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Ninth Circuit erred in reversing the District Court and upholding the Arbitrator's Award which effectively destroyed the Petitioner's right to discharge employees?

2. Whether the Ninth Circuit erred in reversing the District Court and upholding the Arbitrator's Award which contained internally inconsistent and contradictory reasoning?

PARTIES

Petitioner, San Francisco Newspaper Printing Company, Inc., d/b/a San Francisco Newspaper Agency [hereinafter "the Agency"][1] and Respondent, San Francisco Web Pressmen's Union No. 4 [hereinafter "the Union"] were the only parties to the proceedings before the United States Court of Appeals for the Ninth Circuit.

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[1] Pursuant to Rule 28.1 of the Rules of Court, Petitioner states that it is fifty percent owned by The Chronicle Publishing Company and fifty percent owned by The Hearst Corporation. Petitioner has no subsidiary or affiliate.

TABLE OF CONTENTS

	Page
Questions presented for review	i
Parties	i
Table of contents	ii
Table of authorities	iii
Opinions below	1
Jurisdiction	2
Statutory provisions involved	2
Statement of the case	2
Reasons for granting the writ	7
I	
The Ninth Circuit's decision conflicts with this Court's decision in *Fishgold v. Sullivan Repair Corporation* and raises an important question of federal law concerning an employer's right to discharge an employee	7
II	
The Ninth Circuit's decision is in direct conflict with decisions of this Court and other courts of appeals and presents a question important to the administration of the Labor Management Relations Act	9
Conclusion	12
Appendix A	A-1
Appendix B	A-6
Appendix C	A-8
Appendix D	A-11
Appendix E	A-16
Appendix F	A-35
Appendix G	A-99

TABLE OF AUTHORITIES

Cases

Page

Arco-Polymers, Inc. v. Local 8-74, 671 F.2d 752 (3d Cir. 1982) 9

A.S. Abel Co. v. NLRB, 598 F.2d 876 (4th Cir. 1979) .. 3

Bakery & Confectionery Workers' International Union, Local No. 492 v. National Biscuit Co., 177 F.2d 684 (3d Cir. 1949) 8

Bell Aerospace Co., Div. of Textron v. Auto Workers, Local 516, 500 F.2d 921 (2d Cir. 1974) 9, 10, 11

Capital District of New York State, P.D.C.A. v. International Brotherhood of Painters and Allied Traders, Local Union Nos. 201, 12 & 622, 743 F.2d 142 (2d Cir. 1984) 9

CBS, Inc. v. International Photographers of Motion Picture Industries, Local 644, 603 F.2d 1061 (2d Cir. 1979) .. 7, 8

Chastain v. Kelly-Springfield Tire Co., 733 F.2d 1479 (11th Cir. 1984) 8

Fishgold v. Sullivan Drydock & Repair Corp., 328 U.S. 275 (1946) 7, 8, 9

Kallen v. District 1199, National Union of Hospital & Health Care Employees, 574 F.2d 723 (2d Cir. 1978) 9

United Mine Workers of America, District No. 2 v. Barnes & Tucker Co., 561 F.2d 1093 (3d Cir. 1977)..... 10

United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960) 9, 10

United Steelworkers of America v. ICI Americas Inc., 545 F. Supp. 152 (D. Del. 1982) 9

W.R. Grace & Co. v. Local 759, International Union of United Rubber Workers, 461 U.S. 757 (1983) 10

Statutes

Section 301 of the Labor Management Relations Act, 29 U.S.C. §185(a)..... 2

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Petitioner, San Francisco Newspaper Printing Co., d/b/a San Francisco Newspaper Agency, respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Ninth Circuit's opinion is unreported and reproduced herein as Appendix A. The District Court's final order in Civil Action No. 83-4648-EFL, which is unreported, is reproduced herein as Appendix B. Arbitrator Robert Le Prohn's Clarification of Arbitration Award [hereinafter "the Clarification"] is unreported and is reproduced herein as Appendix C. The District Court's opinion, order and judgment in Civil Action No. 82-6133 EFL are unreported and are reproduced herein as Appendix D. Arbitrator Le Prohn's Opinion and Award [hereinafter "the Award"] is unreported and is reproduced herein as Appendix E.

JURISDICTION

The Agency sought to vacate the Arbitrator's Award in the federal district court pursuant to the provisions of Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a). The Union appealed the district court's order to the Ninth Circuit Court of Appeals. The judgment of the Ninth Circuit, which is reproduced herein as Appendix A, was entered on January 22, 1985. This Petition for Certiorari was filed within ninety days of that date. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

The statutory provision involved is Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a):

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy or regard to the citizenship of the parties.

STATEMENT OF THE CASE

A. Factual Background of the Grievance

Michael Tenorio, the grievant involved in the arbitration proceeding, was first referred by the Union to the Agency for employment late in 1977. In January 1978, the Agency notified the Union that it was rejecting Tenorio and another pressman for employment. The rejection was based upon Tenorio's criminal conviction for violence and property destruction in October of 1975. More specifically, Tenorio had been convicted in 1975 of misdemeanor destruction of private property which arose out of

conduct during a strike at the *Washington Post*.[2] Tenorio received a one-year sentence which was suspended, except for 60 days served at a half-way house (E, p. A-21).

The Union grieved the Agency's rejection of Tenorio. Pursuant to the grievance resolution procedure set out in the collective bargaining agreement between the Agency and the Union, this grievance was appealed to the Joint Standing Committee ("JSC").[3] The JSC was comprised of two Agency representatives and two Union representatives. After considering the grievance, the JSC determined that Tenorio should be hired by the Agency, but that he was not entitled to any backpay (E, p. A-21).

The Agency then hired Tenorio. About six months later, in August of 1978, Tenorio and another pressman came into the Agency's premises while off duty and confronted Union Area Representative Paul Trimble in such a manner that Trimble felt threatened. As a result of this confrontation, Trimble requested that a guard escort him to the bus stop when his shift ended that evening. Following this incident, Tenorio and the other pressman were discharged and permanently barred from seeking employment at the Agency.[4] The stated reason for their discharge and permanent bar was " 'gross neglect of duty and violation of Office Rule 6 stemming from threats of violence made to Paul Trimble.' " (E, p. A-21). There was never any question of, or dispute over, Tenorio's competence.

The Union grieved the discharge and permanent bar of Tenorio. On September 21, 1978, the grievance was denied and the

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[2] Tenorio and fifteen fellow strikers actually were indicted on felony charges. As a result of plea bargaining, however, Tenorio was allowed to plead guilty to a misdemeanor (E, p. A-21). A brief description of the violence in the Washington Post's press room is set forth in the Fourth Circuit's decision in *A.S. Abel Co. v. NLRB*, 598 F.2d 876 (4th Cir. 1979).

[3] The collective bargaining agreement is reproduced herein as Appendix F.

[4] In the newspaper industry a discharge and permanent bar is equivalent to a discharge without right to rehire (A, p. A-4; E, p. A-28).

discharge and permanent bar was upheld by the JSC (E, p. A-22). The JSC Union representatives, as well as the Agency representatives, agreed that discharge and permanent bar was the appropriate discipline for Tenorio. The JSC's decision was final and binding on both the Union and the Agency.

Subsequent to his discharge and permanent bar, Tenorio was referred by the Union to the Agency for employment on three occasions. The Agency rejected Tenorio on all three occasions because of his discharge and permanent bar (E, p. A-22). The Union grieved the Agency's refusal to hire Tenorio. When the grievance was not resolved at the JSC, it went to arbitration on April 5, 1982. The issue was framed as follows: "Whether or not the Employer violated the collective bargaining agreement by refus ing to employ the Grievant, Michael Tenorio. If so, what is the appropriate remedy?" (E, p. A-17).

B. The Award

In his Award, the Arbitrator upheld the Union's position and found that the Agency had violated the Agreement in refusing to rehire Tenorio on August 20, 1981.

The Arbitrator began by affirming the Agency's right under the Agreement to discharge and permanently bar individuals: "It is reasonable to conclude that the Agency has a right to effect discharges, i.e., to announce at the time of the disciplinary action that the individual is 'permanently barred,' *not subject to rehire.*" (Emphasis added; E, p. A-28). Next, the Arbitrator flatly rejected the Union's claim that the Agency had no right under the Agreement to discharge and permanently bar Tenorio. He held that by virtue of the JSC decision on September 21, 1978, Tenorio's discharge and permanent bar was final and binding upon the Agency and the Union for purposes of the grievance which he was arbitrating (E, p. A-29).

Logically, this finding required a denial of the grievance. Since for purposes of the arbitration Tenorio validly had been discharged and permanently barred, the Agency could not have any duty to rehire Tenorio. Incredibly, however, the Arbitrator proceeded to sustain the grievance.

The only provision of the Agreement which he cited in support of his Award was Section 1(h). Section 1(h) of the Agreement provides, in pertinent part, as follows: "The Employer shall have the right to reject any applicant for employment referred by the Union." (E, p. A-18; F, p. A-38). The Arbitrator found that under this provision of the Agreement, the Agency did not have an unfettered right to reject applicants, even previously discharged applicants, for employment. Rather, the Arbitrator found the Agency may reject only those applicants who it in good faith believes are not competent to work in the pressroom (E, p. A-32). The Arbitrator then found that the Agency's refusal to rehire Tenorio was arbitrary and capricious, and ordered the Agency to rehire him notwithstanding the fact that Tenorio previously had been discharged and permanently barred (E, p. A-33).

C. Vacation of the Award

The Agency filed in the District Court a Complaint and Petition to Vacate the Award on November 8, 1982. On February 24, 1983, the District Court found that the Award was not a plausible interpretation of the Agreement, vacated the Award, and remanded it to the Arbitrator for clarification. In reaching this result, the District Court found that it was fatally inconsistent and contradictory for the arbitrator to hold that the Agency was required to rehire an individual, Tenorio, who previously had been validly discharged and permanently barred by the Agency:

> The arbitrator's award is *inconsistent* in that he first found that the Agency has a right at the time of discharge to permanently bar an individual and then found that the Agency's subsequent refusal to rehire a permanently barred individual is subject to the grievance procedure and may be held arbitrary and capricious. *It is incomprehensible to this Court* how the arbitrator could determine that the Agency has a right to permanently bar an individual and at the same time determine that this right might be vitiated any time a permanently barred individual is subsequently referred by the Union for rehire. (Emphasis added)

(D, p. A-13):

D. The Clarification

On July 12, 1983, the Arbitrator rendered his so-called Clarification pursuant to the District Court's Order, again upholding the Union's position and finding that the Agency had violated the Agreement in refusing to rehire Tenorio on August 20, 1981 (C, p. A-10).

The Arbitrator did absolutely nothing to respond to the District Court's Order. Instead, he simply reaffirmed the disapproved reasoning of his original decision, and held that the Agency was required to rehire Tenorio even though he validly had been discharged and permanently barred (C, p. A-10).

E. Vacation of the Clarification

The Agency filed in the District Court a Complaint and Petition to Vacate the Clarification on October 4, 1983. After oral argument on January 27, 1984, the District Court granted the Agency's Petition to Vacate, and specifically declined to remand the case to the Arbitrator for a third decision (G, pp. A-109-10).[5] Noting that the Arbitrator was "once again consistently inconsistent" (G, p. A-100), the District Court held that the Clarification suffered from the same internal inconsistencies and contradictions contained in the previously vacated Award.

The District Court concluded that the Clarification was not a plausible interpretation of the Agreement because of the conflicting findings that, on the one hand, the Agency had the right under some circumstances to discharge and bar permanently (i.e., discharge and not rehire) an employee, but, on the other hand, was obligated under some circumstances to rehire that same employee in the future. The District Court reasoned:

> The Arbitrator once again has said that you can fire people permanently, and that's proper, but once again the Arbitrator says that you—that if you don't hire them, you can have another hearing on whether that rehiring was arbitrary and capricious, and I don't understand how that can be consistent with—with the ability to fire permanently.

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[5] The transcript of oral argument before the District Court is reproduced herein as Appendix G.

(G, p. A-100; *see also* G, pp. A-104, 106, 109).

F. The Ninth Circuit's Decision

The Union appealed the District Court's decision to the Ninth Circuit Court of Appeals. That court reversed the District Court and upheld the Arbitrator's award. The Ninth Circuit initially observed that the Arbitrator upheld the Agency's right to discharge employees, i.e., permanently bar *not subject to rehire* (A, p. A-4). The court then redefined the term "rehire" to mean reinstated to a former position with restoration of privileges such as seniority and vacation. Lastly, the Ninth Circuit concluded although a discharged or permanently barred individual does not have a right to rehire, i.e., restoration of accrued benefits, he does have a right to be hired as a new employee, stripped of his previous employment benefits.

REASONS FOR GRANTING THE WRIT

I

THE NINTH CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S DECISION IN *FISHGOLD v. SULLIVAN DRYDOCK & REPAIR CORPORATION* AND RAISES AN IMPORTANT QUESTION OF FEDERAL LAW CONCERNING AN EMPLOYER'S RIGHT TO DISCHARGE AN EMPLOYEE.

This case presents a simple but extremely important question regarding an employer's right to sever completely the employment relationship with an employee who previously was found to have been terminated lawfully. The Ninth Circuit's decision has the radical effect of prohibiting an employer from rejecting for employment an employee who previously was discharged. As a consequence, the lower court wholly undercut an employer's basic right to discharge.

In the landmark case of *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 286 (1946), this Court established that a "discharge" meant the "termination of the employment relationship or loss of position." *See also, CBS, Inc. v. International Photographers of the Motion Picture Industries, Local 644*, 603

F.2d 1061, 1063 (2d Cir. 1979); *Bakery & Confectionery Workers' International Union, Local No. 492 v. National Biscuit Co.*, 177 F.2d 684, 687 (3d Cir. 1949). It follows, both logically and as a matter of common sense, that one consequence of terminating the employment relationship is that an employer has no duty to rehire that discharged employee. If an employer is obligated to rehire a discharged employee, in essence it only has suspended, but not terminated, the employment relationship.

The right to discharge is one of management's most cherished rights, and should not be eliminated absent some clear and unequivocal agreement between the parties to the contrary. *Accord, Chastain v. Kelly-Springfield Tire Co.*, 733 F.2d 1479 (11th Cir. 1984) (no contract for lifetime employment absent clear agreement). While employers subject to collective bargaining agreements, including the Agency, typically agree not to discharge employees in the absence of just cause, such a limitation has never been held to eliminate employers' basic right to sever the employment relationship completely when just cause for discharge is present. Indeed, the Arbitrator correctly held that the Agency had the right to discharge employees, and, more particularly, had properly exercised that right in discharging Tenorio.

The Ninth Circuit, in upholding the Arbitrator's Award compelling the Agency to rehire Tenorio, effectively stripped the Agency's right to discharge of its most basic and important component, namely, to sever completely the employment relationship between an employer and its employee. In stark contrast to this Court's *Fishgold* opinion, the lower court construed an employer's right to discharge to mean merely temporary termination from employment, subject to an employee's right to be rehired upon subsequent application. By focusing on the loss of such benefits as seniority and vacation, rather than the complete termination of the employment relationship, the lower court vitiated the employer's right to discharge. It is elementary that once an employer is forced to rehire an employee who lawfully was discharged, the employer's right to discharge has been destroyed, *whether or not that employee returns with all, some or none of the benefits which he previously held.*

The Agency respectfully submits that this Court should grant the instant Petition because the opinion of the court below decides a federal question in a way which is directly contrary to this Court's definition of a discharge in *Fishgold v. Sullivan Drydock & Repair Corp.* This question, concerning an employer's right to sever conpletely the employment relationship of a lawfully discharged employee, goes to the heart of the employer-employee relationship, and thus is of critical importance to all employers and employees. Accordingly, the Agency submits the issues herein presented are of extraordinary public importance and merit this Court's review.

II

THE NINTH CIRCUIT'S DECISION IS IN DIRECT CONFLICT WITH DECISIONS OF OTHER COURTS OF APPEALS AND PRESENTS A QUESTION IMPORTANT TO THE ADMINISTRATION OF THE LABOR MANAGEMENT RELATIONS ACT.

This case presents an important variation of the tension between the policies favoring judicial deferral to arbitration awards and the importance of maintaining the integrity of the arbitral process. *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 598 (1960).

Under well established principles governing the review of labor arbitration awards, "courts will not enforce an arbitration award that is incomplete, ambiguous or contradictory." *Bell Aerospace Co., Div. of Textron v. Auto Workers, Local 516*, 500 F.2d 921, 923 (2d Cir. 1974) (award contradictory on its face); *see also Arco-Polymers, Inc. v. Local 8-74*, 671 F.2d 752, 754 n.1 (3d Cir. 1982); *United Steelworkers of America v. ICI Americas Inc.*, 545 F. Supp. 152, 154 (D. Del. 1982).[6] Courts are bound to enforce

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[6] *Cf. Capital District of New York State, P.D.C.A. v. International Brotherhood of Painters and Allied Trades, Local Union Nos. 201, 12 and 622*, 743 F.2d 142, 147 (2d Cir. 1984); *Kallen v. District 1199, National Union of Hospital & Health Care Employees*, 574 F.2d 723, 726 (2d Cir. 1978).

an arbitration award only if it draws its essence from the collective bargaining agreement. *W. R. Grace & Co. v. Local 759, International Union of United Rubber Workers,* 461 U.S. 757, 103 S. Ct. 2177, 2182 (1983); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*

In the instant case, the Ninth Circuit ignored its responsibility to ferret out internally contradictory awards when it reversed the District Court and upheld the Award. The Ninth Circuit's decision thus conflicts with the *Bell Aerospace* and related decisions proscribing enforecement of internally contradictory awards. The Arbitrator held that the Agency had the right to discharge an employee, "*i.e.,* to announce at the time of the disciplinary action that the individual is 'permanently barred,' not subject to rehire." (E 15). On the other hand, the Arbitrator also concluded that the Agency was required under some circumstances to rehire that same employee if subsequently referred by the Union. The Arbitrator's inconsistent and contradictory reasoning is patent; once he found Tenorio had been validly discharged and permanently barred (i.e., discharged and not subject to rehire), it logically follows that the Agency should not have any duty to rehire Tenorio under any circumstances. The Ninth Circuit's attempt to harmonize the facially contradictory reasoning by distinguishing between reinstatement with restoration of benefits and rehire as a new employee ignores the Arbitrator's obvious contradiction that the Agency had the right to discharge Tenorio, but also had the obligation to rehire him under certain circumstances. As noted above, any requirement that the Agency rehire Tenorio essentially eliminates the Agency's fundamental right to discharge, *i.e.,* sever completely the employment relationship.

As the decisions of this Court and lower courts make clear, courts are charged with ensuring that arbitration awards draw their essence from the contract and that they are not the product of contradictory and inconsistent reasoning. Awards that are the product of contradictory reasoning defeat the federal policy of settling disputes through arbitration because, rather than resolve disputes, they create new ones. *Bell Aerospace Co.,* 500 F.2d at

922.[7] Although the Ninth Circuit adhered to the policy in favor of judicial deference to arbitration awards, it abdicated its responsibility to ensure that awards are internally consistent. In so doing, the lower court failed to follow the dictates of this Court and created a conflict between the Ninth Circuit and the Second Circuit (*Bell Aerospace Co.*) regarding the appropriate treatment of awards with contradictory reasoning. Because of the paramount function of arbitration in the federal labor scheme, it is critical to all employers and unions that courts refrain from enforcing awards infected with inconsistent and contradictory reasoning. Accordingly, the Agency submits that this Court should grant this Petition because the opinion of the court below decides a federal question in a way which is contrary to this Court's directives for review of arbitration decisions and because of the conflict with the Second Circuit's decision in *Bell Aerospace Co.*

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[7] *See also United Mine Workers of America, District No. 2 v. Barnes & Tucker Co.*, 561 F.2d 1093, 1099 (3d Cir. 1977) ("[T]o grant enforcement of an indefinite arbitration or settlement award would, by a two-step process, subvert rather than promote the policy favoring adjustment of differences by a means agreed upon by the parties. First, an award that is incomplete or uncertain would by itself tend to generate future disputes over the scope of the award (citations omitted). Second, judicial enforcement of such an award would guarantee that a number of those future disputes would find their way into the courts by way of contempt proceedings." (Citations omitted.)

CONCLUSION

For the foregoing reasons, the Agency respectfully requests that a Writ of Certiorari be issued to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted,

SAN FRANCISCO NEWSPAPER
PRINTING COMPANY, INC.,
d/b/a SAN FRANCISCO
NEWSPAPER AGENCY

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Dated: April 18, 1985

(Appendices follow)

Appendix A

United States Court of Appeals
For the Ninth Circuit

No. 84-1711

DC No. C 83-4648 EFL

San Francisco Newspaper Printing
Company, Inc., d/b/a San Francisco
Newspaper Agency,
Plaintiff-Counterdefendant/
Appellee,

vs.

San Francisco Web Pressmen's
Union No. 4
Defendant-Counterclaimant/
Appellant.

[Filed Jan. 22, 1985]

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Honorable Eugene F. Lynch, Presiding

Argued and Submitted December 10, 1984

BEFORE: CANBY, NORRIS and BEEZER, Circuit Judges.

Federal courts have a very limited scope of review when passing on the validity of a labor arbitration award. The award must be enforced "so long as it draws its essence from the collective

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* The panel has concluded that the issues presented by this appeal do not meet the standards set by Rule 21 of the Rules of this Court for disposition by written opinion. Accordingly, it is ordered that disposition be by memorandum, foregoing publication in the *Federal Reporter*, and that this memorandum may not be cited to or by the courts of this circuit save as provided in Rule 21(c).

bargaining agreement." *See United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). This deference to the arbitrator's decision advances the Congressional policy of peaceful resolution of labor disputes through binding arbitration by investing the decision with finality. Moreover, it is consistent with the parties' intent, evinced by an arbitration clause in their collective bargaining agreement, to have disputes concerning constructions of the contract resolved by an arbitrator. *W. R. Grace & Co. v. Local 759, International Union of United Rubber Workers*, 461 U.S. 757, ____, 103 S.Ct. 2177, 2182 (1983).

An arbitrator's award "draws its essence from the collective bargaining agreement," and must therefore be enforced, if it "represents a plausible interpretation of the contract." *Edna H. Pagel, Inc. v. Teamsters Local Union 595*, 667 F.2d 1275, 1278-79 (9th Cir. 1982). This remains so even if the basis for the decision is ambiguous, *W. R. Grace*, 461 U.S. at ____,103 S.Ct. at 2182, or if no reason for the award is provided. *Steelworkers*, 363 U.S. at 598 ("Arbitrators have no obligation to the court to give their reasons for an award."). A federal court is not at liberty to review the merits of the award nor to substitute its own preferred interpretation in place of the arbitrator's. *Edna H. Pagel*, 667 F.2d at 1278. If on its face the award represents a plausible interpretation of the contract, judicial inquiry must cease and the award must be enforced. *George Day Construction Company v. United Brotherhood of Carpenters*, 722 F.2d 1471, 1477 (9th Cir. 1984). This court must review the award, as did the district court, under this narrow standard. *Id.*

The issue before Arbitrator LeProhn was whether appellee San Francisco Newspaper Agency (the "Agency") had violated the referral clause by rejecting Tenorio as a new hire on the basis of his prior discharge and without inquiring into his present capabilities as an employee. To resolve the issue Arbitrator LeProhn had to interpret and reconcile seemingly contradictory provisions of the Collective Bargaining Agreement (the "Agreement"): on the one hand, Section 1(f) which accords appellant San Francisco Web Pressmen's Union No. 4 (the "Union") the right to refer persons to the Agency, and Section 1(h) which provides the

Union with a cause of action to grieve the rejection of a referral; and, on the other hand, Section 1(h) which affords the Agency the right to reject any applicant referred by the Union, and Section 11(c) which provides that the Agency may discharge an employee for one of four enumerated reasons. The question for this Court is whether the Arbitrator's interpretation of those provisions is plausible. We conclude that it is.

The Arbitrator examined Section 1(f) and observed that "the Agreement provides that the first source of new employees shall be competent journeymen referred by the Union . . . ." Clarification of Opinion and Award, July 7, 1983, at 2 ("Clarification"). He continued, "while the Agency has the right to reject applicants referred by the Union [under Section 1(h)], rejections are subject to the grievance procedure [Section 1(h)]." *Id.* By including the failure to hire referred applicants within the purview of the grievance procedure, the Arbitrator concluded, the parties implicitly adopted some standard for determining whether the Agency's rejection of an applicant was appropriate. *Id.* The Agreement, however, was silent as to the specific standard. Arbitrator LeProhn choose to employ a good faith test, the standard typically applied by arbitrators to refusal to hire cases when the agreement is silent. Opinion and Award, August 12, 1984, at 20 ("Award"). He thereby concluded that under the Agreement, the Agency may reject an applicant only so long as the rejection is not arbitrary or capricious but is, instead, grounded upon a good faith belief that the applicant is not competent to be employed. Contrary to the Agency's urgings, he refused to find that Subsection 1(h) empowered the Agency to reject any pressman supplied by the Union, the applicant's competence notwithstanding, for that would vitiate the Union's right to staff the job with competent journeymen it refers as well as its right to grieve the propriety of any specific rejection. Clarification at 3.[1]

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[1] In reaching his conclusion, the Arbitrator relied in part on *Newark Publishers' Assn.*, 43 Lab. Arb. 245 (1963)(Smertz, Arb.), a case in which the arbitrator reached a similar result on the basis of comparable contractual provisions.

The Arbitrator further concluded that this limitation on the Agency's right to reject applicants applies to all applicants referred by the Union regardless of their previous employment status. In other words, Section 11(c) does not exempt previously discharged employees from the operation of Section 1. The Arbitrator read Section 11(c) to mean the Agency has the right "to effect discharges, i.e., to announce at the time of the disciplinary action that the individual is 'permanently barred,' not subject to rehire." Award at 15. A "permanent bar," he noted, is a term of art in the newspaper industry which is merely the equivalent of a conventional discharge. Award at 14. Thus, a permanently barred individual has no right to be reinstated to his former position with a restoration of privileges such as seniority, vacation and scheduling priority rights. If referred out and accepted he must start anew. That is not to say, however, that the Union loses its rights embodied in Section 1. To the contrary, the Union has the right to refer previously discharged employees, and such applicants, like all referrals, must be fairly considered under standards which are neither arbitrary nor capricious.[2] The rights of Section 1, he found, cannot be defeated merely by pointing to an applicant's prior discharge. Previous discharge is only one relevant consideration.

Applying his interpretation of the Agreement to the facts before him, Arbitrator LeProhn found that the rejection of Tenorio's referral in 1981 rested exclusively upon his prior discharge and violated Section 1(h) of the Agreement.

> "The rejection was arbitrary and perfunctory in view of the staleness of the incidents of misconduct upon which the rejection rested and the failure to investigate Tenorio's job-related conduct subsequent to his discharge, which would have evidenced his rehabilitation, and in view of Tenorio's

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[2] Contrary to the district court's assertion, the Arbitrator did not determine "that the Agency has a right to permanently bar an individual and at the same time determine that this right might be vitiated *any time* a permanently barred individual is subsequently referred by the Union for rehire." District Court Order of February 24, 1983, at 4 (emphasis added).

> exemplary record subsequently to his discharge by the Agency."

Award at 21.

The Arbitrator's interpretation of the interaction of Sections 1 and 11(c) of the Agreement permits both sections to have meaning and application when a previously discharged employee subsequently is referred for employment with the Agency. Whether or not it is the best or preferred interpretation is irrelevant. The Award represents a plausible interpretation of the Agreement and should therefore be enforced. *George Day*, 722 F.2d at 1477.

REVERSED and REMANDED for entry of judgment enforcing the arbitrator's award.

Appendix B

United States District Court
Northern District of California

No. C-83-4648 EFL

San Francisco Newspaper Printing Company, Inc.,
dba San Francisco Newspaper Agency,
Plaintiff

vs.

San Francisco Web Pressmen's Union No. 4,
Defendant.

San Francisco Web Pressman's Union No. 4,
Counterclaimant,

vs.

San Francisco Newspaper Printing Company, Inc.,
dba San Francisco Newspaper Agency,
Counterdefendant.

[Filed Feb. 10, 1984]

ORDER VACATING ARBITRATION AWARD

The Court having considered the motion of plaintiff-counterdefendant to vacate the clarification of opinion and arbitration award, or, in the alternative, for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, the motion of defendant-counterclaimant to enforce the clarification of opinion and arbitration award, or, in the alternative, for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, the memoranda of points and authorities and affidavit filed in support and opposition thereof, and having heard and considered the arguments of counsel for plaintiff-counterdefendant and defendant-counterclaimant;

IT IS THEREFORE ORDERED that plaintiff-counterdefendant's petition to vacate the clarification of opinion and arbitration award is GRANTED. Defendant-counterclaimant's petition to enforce the clarification of opinion and arbitration award is DENIED. The motions for summary judgment are DENIED.

Dated: February 10, 1984.

/s/ E. Lynch

EUGENE F. LYNCH
United States District Judge

Appendix C

Arbitration Proceedings Before
Robert LeProhn, Arbitrator

In the Matter of a Controversy Between
San Francisco Newspaper Agency
Employer

and

San Francisco Web Pressmen's Union, No. 4
Union

CLARIFICATION OF OPINION AND AWARD

The Opinion and Award in the above-captioned matter issued in August, 1982, holding that the Employer violated the collective bargaining agreement in refusing to rehire Michael Tenorio. Thereafter both parties sought summary judgment in Federal District Court. The Court remanded the matter to the Arbitrator for clarification, stating in part: "This Court finds that the arbitrator's opinion is at least unintelligible and at best internally inconsistent and therefore cannot represent a plausible interpretation of the contract."

Thereafter the parties submitted arguments in support of their respective positions. The Employer contends that the Arbitrator has no option but to reverse his decision and find no violation of the contract in its refusal to hire Tenorio. The Union argues that any inconsistency is the result of the contract and not in the result reached by the Arbitrator.

Initially, it should be noted that the issue is whether the contract was violated when the Employer rejected the referral of Tenorio. Customarily a collective bargaining agreement does not place any limitation on the right of an employer to reject an applicant for work beyond the requirement that there be no discrimination against union members; nor do collective bargaining agreements customarily provide the right to grieve the refusal of an employer to hire a particular individual.

Such is not the case here: the agreement provides that the first source of new employess shall be competent journeymen referred by the Union, if none are available the Employer may fill a vacancy temporarily until the Union is able to supply competent personnel. While the Employer has the right to reject applicants referred by the Union, rejections are subject to the grievance procedure. By including the failure to hire referred applicants within the purview of the grievance procedure the parties implicitly adopted some standard for determining whether the Employer's rejection of an applicant was appropriate. The standard applied by the Arbitrator in the instant case was whether the Employer's action was arbitrary or capricious.

The Court stated: "It is incomprehensible to this Court how the arbitrator could determine that the Agency has a right to permanently bar an individual and at the same time determine that this right might be vitiated *at any time* a permanently barred individual is subsequently referred by the Union for rehire." [Emphasis added.] The Opinion and Award was not intended to stand for the proposition that *any time* a permanently barred individual is subsequently referred for employment, he cannot be rejected. As noted therein, referrals must be examined on a case-by-case basis to ascertain whether a particular rejection was arbitrary or capricious. On the basis of the evidence presented at the arbitration hearing it was concluded that the Employer's action in this case was arbitrary or capricious.

The Union presented evidence of Tenorio's competency and his on-the-job demeanor subsequent to his discharge by the Employer. This evidence stands unrebutted by the Employer. The testimony was credited; it supports the conclusion that Tenorio was a competent journeyman as of August 20, 1981.

So long as the Employer does not act in an arbitrary or capricious manner in rejecting referred journeymen, its ability to reject a previously discharged (permanently barred) journeyman is not impaired and certainly not vitiated. To permit the Employer to reject competent journeymen, even competent journeymen previously discharged, without being subjected to the limitations that their conduct was neither arbitrary nor capricious would vitiate the right granted the Union to man the job with competent

journeymen it refers as well as the right to grieve the propriety of any specific rejection.

The fact that Tenorio had previously been discharged by the Employer is a relevant consideration in determining whether the Employer's action was proper; but it is not the only relevant consideration. The evidence adduced by the Union regarding his work record subsequent to his termination is also relevant. In finding that the Employer violated the agreement, that evidence was found to outweigh the fact of his prior discharge. To reach the result urged by the Employer would require that the Arbitrator modify the agreement to provide that once discharged, an individual, however competent he might be, could be rejected out of hand by the Employer. Such a modification of the agreement is appropriately left to the parties.

For the reasons set forth above, the Award of August 12, 1982, is reiterated.

AWARD

The grievance is sustained. The Agency violated Section 1(h) in refusing to hire Michael Tenorio on August 20, 1981. The matter is remanded to the parties for the purpose of fashioning a remedy. Pursuant to stipulation, jurisdiction is retained in the event the parties are unable to resolve the matter of remedy.

Dated: July 12, 1983

By /s/ Robert LeProhn

Robert LeProhn, Arbitrator

Appendix D

United States District Court

Northern District of California

No. C-82-6133 EFL

San Francisco Newspaper Printing Company, Inc., d/b/a San Francisco Newspaper Agency,
Plaintiff,

vs.

San Francisco Web Pressmen's Union No. 4,
Defendant.

[Filed Feb. 24, 1983]

ORDER

This action is before the Court on petition of plaintiff San Francisco Newspaper Printing Company (Agency) to vacate and on petition of defendant San Francisco Web Pressmen's Union No. 4 (Union) to enforce an arbitration award rendered under a collective bargaining agreement between the Agency and the Union. The parties have filed cross-motions for summary judgment.

In 1977 the Union referred Michael Tenorio, a pressman, to the Agency for employment. In January 1978 the Agency notified Tenorio that it was rejecting him for employment because of his misdemeanor conviction[1] for violence and property destruction during a strike at the Washington Post in October of 1975. The Union grieved the Agency's rejection of Tenorio pursuant to the procedure set out in the collective bargaining agreement. This grievance was appealed to the Joint Standing Committee (JSC), which determined that Tenorio should be hired by the Agency,

[1] Tenorio and fellow strikers were indicted on felony charges, but Tenorio was allowed to plead guilty to a misdemeanor as a result of plea bargaining.

but that he was not entitled to back pay. The Agency then hired Tenorio in early 1978.

In August of 1978, Tenorio and another pressman entered the Agency's premises while off duty and confronted Union Area Representative Trimble. The Agency contends that Trimble felt threatened and had to request a security personnel escort to the bus stop at the end of his shift that evening. An ALJ later found that Tenorio did not threaten Trimble.

Following this incident, Tenorio and the other pressmen were discharged and permanently barred from seeking employment at the Agency. The Agency stated that the reason for the discharge was "gross neglect of duty and violation of Office Rule 6 stemming from threats of violence made to Paul Trimble." The Union grieved the discharge and permanent bar of Tenorio. On September 21, 1978 the JSC denied the grievance and upheld the discharge and permanent bar.

Since his discharge, Tenorio has been referred to the Agency by the Union for employment on three occasions. The Agency has rejected Tenorio on all three occasions. The Union grieved the Agency's refusal to hire Tenorio. The grievance was not resolved at the JSC, so it went to arbitration on April 5, 1982. the arbitrator upheld the Union's grievance and found that the Agency had violated the agreement in refusing to rehire Tenorio.

In his opinion, the arbitrator appeared to recognize the Agency's right under the collective bargaining agreement to discharge and permanently bar individuals. However, the arbitrator then proceeded to sustain the Union's grievance, such that the Agency did not in effect have the absolute right to reject Tenorio despite his permanent bar. Plaintiff contends that the arbitrator exceeded the scope of his contractual authority, ignored the language of the agreement, and in effect rewrote the agreement.

The standard of judicial review is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is confined to ascertaining whether the award, on its face, represents a plausible interpretation of the contract in the context of the parties' conduct. If the essence of the award is drawn from the collective bargaining agreement, the court must

enforce the award whether or not it agrees with the arbitrator's interpretation of the agreement. *Francesco's B., Inc. v. Hotel & Restaurant Employees*, 659 F.2d 1353, 1389 (9th Cir. 1978).

In his award, the arbitrator noted that in the context of a discharge, "permanent bar" in the newspaper industry is equivalent to a conventional discharge in other industries. The arbitrator stated that there is no doubt that the Agency had the right, under the agreement, to "permanently bar", *i.e.*, discharge, Tenorio for just cause in August of 1978. The issue before the arbitrator was the propriety of the Agency's refusal to *rehire* Tenorio in 1981.

The arbitrator first concluded that the Agency has the right, under the agreement, to announce at the time of the discharge that the individual is "permanently barred" and thus not subject to rehire. Yet, he then concluded that subsequent to such a discharge and "permanent bar" of an individual, the Agency may refuse to rehire that individual only upon a good faith belief that the individual is not competent to perform his duties. The arbitrator sustained the Union's grievance on the grounds that the Agency's refusal to rehire Tenorio was an arbitrary and capricious assumption that Tenorio was incompetent in view of the staleness of the incidents of misconduct upon which the rejection rested and the failure to investigate Tenorio's job-related conduct and exemplary record subsequent to his discharge, which would have evidenced his rehabilitation.

The arbitrator's award is inconsistent in that he first found that the Agency has a right at the time of discharge to permanently bar an individual and then found that the Agency's subsequent refusal to rehire a permanently barred individual is subject to the grievance procedure and may be held arbitrary and capricious. It is incomprehensible to this Court how the arbitrator could determine that the Agency has a right to permanently bar an individual and at the same time determine that this right might be vitiated any time a permanently barred individual is subsequently referred by the Union for rehire.

This Court finds that the arbitrator's opinion is at least unintelligible and at best internally inconsistent and therefore cannot

represent a plausible interpretation of the contract. To the extent that an arbitration opinion and award is unclear and a dispute exists between the parties as to its meaning, a court should order the matter back to the arbitrator for clarification. *Hanford Atomic Metal Trades Council v. General Electric Co.*, 353 F.2d 302, 305 (9th Cir. 1965).

Accordingly, plaintiff's petition to vacate the arbitration award is granted; defendant's petition to enforce the arbitration award is denied. Summary judgment is denied. IT IS ORDERED that the matter be resubmitted to the arbitrator for clarification.

IT IS SO ORDERED.

Dated: February 24, 1983.

/s/ Eugene F. Lynch

EUGENE F. LYNCH
United States District Court Judge

United States District Court
Northern District of California

No. C-82-6133 EFL

San Francisco Newspaper Printing Company, Inc., d/b/a San Francisco Newspaper Agency,
Plaintiff,

vs.

San Francisco Web Pressmen's Union No. 4,
Defendant.

[Filed Feb. 24, 1983]

JUDGMENT

This Court having granted plaintiff's petition to vacate the arbitration award and having denied summary judgment and defendant's petition to enforce the arbitration award,

IT IS HEREBY GRANTED AND ADJUDGED that this matter be and hereby is resubmitted to the arbitrator for clarification pursuant to the Court's order in this matter.

The parties are to bear their own attorney's fees and costs incurred herein.

Dated: February 24, 1983.

/s/ Eugene F. Lynch
EUGENE F. LYNCH
United States District Court Judge

Appendix E

Arbitration Proceedings Before
Robert LeProhn, Arbitrator

In the Matter of Arbitration Between
San Francisco Newspaper Agency
Employer

and

San Francisco Web Pressmen's Union No. 4
Union

ARBITRATOR'S OPINION AND AWARD

This arbitration arises under the current collective bargaining agreement (Agreement) between San Francisco Web Pressmen and Platemakers' Union No. 4 (Union) and San Francisco Newspaper Agency (Agency or Employer) pursuant to the provisions of which Robert LeProhn was named impartial arbitrator and pursuant to the provisions of which his award is final and binding upon the parties.

Hearing was held in San Francisco, California, on April 5, 1982. The parties were given full opportunity to examine and cross-examine witnesses, to introduce relevant exhibits and to file post-hearing briefs.

APPEARANCES:
On Behalf of the Union:

Joe R. McCray
433 Turk Street
San Francisco, California 94103

Matthew D. Ross
Davis, Frommer & Jesinger
182 Second Street
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On Behalf of the Employer:
Keith A. Hunsaker, Jr.
Seyfarth, Shaw, Fairweather &
Geraldson
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2029 Century Park Plaza
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ISSUE

Whether or not the Employer violated the collective bargaining agreement by refusing to employ the Grievant, Michael Tenorio. If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

SECTION 1—UNION SHOP

* * * * *

(b) *No Discrimination*—The Union agrees to cooperate with the Employer's effort to avoid any form of illegal employment discrimination and to achieve a balanced work force, inclusive of racial minorities and women.

(c) The Employer shall employ only journeymen pressmen and foremen who meet the minimum requirements as to training, experience and ability as recognized by prevailing standards. Unless otherwise mutually agreed by the parties hereto, only persons with a minimum of four (4) years practical experience in all phases of pressroom work shall be considered to have qualifications of a jouneyman.

* * * * *

(f) The Union agrees to furnish at all times a sufficient number of competent persons as may be required by the Employer for the proper operation of its pressrooms, and in case of the Union's inability to do this at any time, the foreman of any office shall have the privilege of engaging such persons as he may see fit to temporarily make up the

necessary quota until such time as the Union can furnish the persons required, and the foreman shall not be required to replace such outside persons with persons referred by the Union in case such persons report later during that shift. Foreman shall exercise their authority in a non-discriminatory manner, under law and this contract, and no foreman shall be disciplined by the Union for any act within the scope of his authority.

(g) The Union's referral of applicants for jobs with the Employer and the hiring and terms of employment of such applicants, escept [sic] as hereinbefore set forth, shall be on a non-discriminatory basis and shall not be used on, or in any way affected by, Union membership, by-laws, rules, regulations, constitutional provisions, or any other aspect or obligation of Union membership, policies or requirements.

(h) The Employer shall have the right to reject any applicant for employment referred by the Union. Grievances arising from the rejection of applicants for employment shall be referred to the Joint Standing Committee for settlement.

SECTION 11—FOREMAN—DUTY AND AUTHORITY

* * * * *

(c) The foreman may discharge for incompetency, violation of the Employer's office rules (which shall be conspicuously posted), neglect of duty and to decrease the force. Whenever a discharged employee is barred for more than six (6) months, the Union must be notified in writing.

SECTION 21—JOINT STANDING COMMITTEE

* * * * *

(b) Immediately after the execution of this Agreement a Joint Standing Committee of four (4) members shall be appointed, two (2) members of said committee to be named

by the party of the first part and two (2) members by the party of the second part. . . .

* * * * *

(d) It shall require the affirmative notes of the four (4) members of the Joint Standing Committee to decide the issues, and the decision of the Joint Standing Committee shall be final and binding on the parties hereto. If the Joint Standing Committee cannot reach an agreement within ten (10) days from the date on which a dispute is first considered by it, at the request of either party hereto, said dispute may be moved to arbitration in accordance with procedures set forth in sub-Section 21(f) hereof. The members of the Joint Standing Committee shall form a Board of Arbitration and shall select a fifth (5th) member who shall be a disinterested party and who shall act as Chairman of the Board.

* * * * *

(h) The decisions including remedies issued by the arbitrator shall be final and binding. All issues concerning arbitrability shall be submitted only to the arbitrator for decision and such decision shall be final and binding.

RELEVANT PROVISIONS OF SUPPLEMENTAL AGREEMENT ON JOB SECURITY AND WORK ARRANGEMENTS

(c) Notwithstanding the discharge procedure provided for in SECTION XI(b) above, an employee's name shall not be removed from the Attrition List nor shall the employee suffer permanent loss of his guaranteed job except for discharge resulting from the seven (7) reasons set forth below. Employees discharged for other than the reasons set forth below must be reinstated at a time considered appropriate by the Joint Standing Committee and/or the designated arbitrator provided for in (b)(6) above. In addition to determining how long such an employee must be kept off the job should the discharge be upheld, the Joint Standing Committee and/or arbitrator shall also determine if the employee shall

be reinstated with restoration of full priority or loss of priority. Employees discharged for the following reasons shall be permanently barred and shall not be covered by the terms of this Section:

(1) Gross insubordination.

(2) Larceny.

(3) The "initial physical aggressor" engaged in physical violence resulting in bodily injury.

(4) Malicious and deliberate destruction of Company property.

(5) Harboring a chronic/communicable disease which may endanger the health of others.

(6) Permanent physical disability rendering an employee physically unable to perform Pressroom work.

(7) An employee discharged for the same offense for the second time, unless there are sufficiently extenuating circumstances surrounding the occurrence of the event(s) causing the second discharge and/or if the second such discharge was not within a three year period following the first discharge for the same offense.

[Section XI(c), Supplemental Agreement.]

STATEMENT OF FACTS

Michael Tenorio, Grievant herein, is currently a member of Web Pressmen and Platemakers' Union, Local 4. He became a journeyman pressman in 1973; since then Tenorio has worked in various cities throughout the country. He came to San Francisco in November, 1977, and was referred for employment with the Agency. Tenorio incurred an industrial injury in December, 1977, and was disabled until mid-April, 1978.

During the period he was unable to work, Tenorio received notice the Agency had terminated him for conduct in connection with a 1975 strike at the Washington Post. By letter of January 17, 1978, the Union was notified the Agency had completed an

investigation of the employment history of Tenorio and Gil Fowler, and "based upon their conviction of unprotected activity in the form of violence and property destruction in October, 1975," the Agency was rejecting them from employment.[1] Section 1(h) of the Agreement was cited as authority for its action.

Tenorio was convicted in 1975 of misdemeanor destruction of private property arising out of strike conduct against the Washington Post. He and 15 fellow strikers were indicted on felony charges but were able to plea bargain and pled guilty to misdemeanors. Tenorio received a one-year sentence which was suspended except for 60 days served at a half-way house.

The Agency's discharge of Tenorio was appealed by the Union to the Joint Standing Committee (JSC). The JSC met on January 18, 19 and 30, 1978, to deal with the related grievance of Tenorio, Fowler and Fred Tweedie.[2] Each was reinstated with no back pay.

In August, 1978, Tenorio and Fowler were discharged by the Agency for coming onto the premises while off duty and seeking to speak to Area Representative Trimble. Trimble felt threatened by Fowler's words and conduct. Because he was concerned for his safety when his shift ended, he had the Agency's security personnel accompany him to his bus stop. The Union referred the matter to the JSC.

The discharge notice to the Union states that Tenorio and Fowler were discharged for "gross neglect of duty and violation of Office Rule 6 stemming from threats of violence made to Paul Trimble." As the result: "The Company was left with no alternative but to discharge [Fowler and Tenorio] and to impose upon them a permanent life-time bar from seeking employment at the . . . Agency."[3]

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[1] Company Exhibit 4.

[2] The Agency's action vis-a-vis Tweedie and Fowler also rested upon their Washington Post strike conduct.

[3] Company Exhibit 17.

At the JSC hearing, the Agency argued it "had no alternative but to discharge them and to impose upon them a permanent bar."[4] The Union "on the advice of counsel at this time based upon the evidence submitted by the Company [chose] not to pursue the matter of the discharges of Fowler and Tenorio."[5] "[T]he Decision of the Joint Standing Committee was to uphold the discharges."[6]

Since August, 1978, Tenorio has been referred to the Agency by local 4 on three occasions. He was rejected on each occasion. Because of his Washington Post strike activity, Tenorio has also been barred from the San Jose Mercury-News, the Oakland Tribune and from Hayward and Palo Alto newspapers. The Richmond-Independent and the Alameda Times-Star lifted previously imposed bars when they were experiencing difficulty in obtaining persons to operate their offset presses. Since August, 1978, Tenorio has also worked at the Wall Street Journal and the Progress; however, he has not consistently worked five shifts per week since his discharge by the Agency, which provides 25% to 30% of the shifts available in the area to journeymen pressmen.

The record contains no evidence Tenorio has engaged in any misconduct on any job since his discharge by the Agency in 1978.

In 1966, the Union requested that a non-Agency employee, Willis Bogan, be permanently barred from the pressroom alleging he carried a gun and was dangerous. On March 4, 1966, the Employer issued a directive complying with the union's request. Thereafter he was not referred to the Agency.

By letter of November 19, 1968, the Agency notified the Union that George Upchurch was discharged and permanently barred from seeking employment with the Agency. The propriety of the Agency action was not pursued to arbitration.

In April, 1971, The Agency discharged and permanently barred Charles Lutz from employment with the Agency. Its action was

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[4] Union Exhibit "F."

[5] *Ibid.*

[6] *Ibid.*

triggered by Lutz's "insubordination and continued neglect of duty, and violation of the Employer's office rule pertaining to 'Long Hair and/or Beards.' "[7] The Lutz case was not grieved.

In 1972, the Agency discharged and permanently barred Thomas Villatore for gross misconduct and dishonesty. The matter was not processed to arbitration by the Union.

In the late 1960's or early 1970's Thomas Mariani, Sr., committed an off-premises assault upon a supervisor which resulted in his discharge and permanent bar. A grievance was filed on his behalf and processed to the JSC. The JSC upheld the discharge and Mariani remained permanently barred. Twice thereafter Mariani was referred by the Union and rejected by the Agency. He has never returned to work at the Agency.

In April, 1971, the Agency discharged and permanently barred Thomas Villatore for gross misconduct and dishonesty. The matter was not processed to arbitration by the Union.

In the early 1970's Stephen Francis, intermittently employed by the Agency, was barred from all pressroom chapels because of his drinking problem. After action by Local 4, Francis was reinstated subject to taking the cure and staying on the wagon. Thereafter he was again discharged for drinking and the Agency rejected Local 4's efforts to have him reinstated.

Work opportunities for Local 4 members have been seriously reduced in recent years. The Union has approximately 20 collective bargaining agreements which provide the market place for its 650 to 675 members. The Agency provides 25% to 30% of the shifts available to Local 4 journeymen.

Northwest Publications, Inc., publisher of the San Jose Mercury News, is party to the Agreement between the Agency and the Union. Since 1966 Northwest and the Agency have negotiated jointly with Local 4. The Agreement applies to both papers absent a parenthetical statement to the contrary in the Agreement. In 1980 Northwest and the Union arbitrated a grievance before Harvey Letter on the issue of whether Northwest violated

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[7] Company Exhibit 14.

the Agreement by refusing to employ Tenorio. Letter held Northwest had not so violated the Agreement.

Employment in the industry is obtained through the referral system set forth in the Agreement. A journeyman coming into Local 4's jurisdiction from another area deposits his traveling card at a shop of his choice irrespective of whether or not there is work available. This shop becomes his home shop; however, he is not restricted to working at his home shop. When the individual is working less than five shifts per week at his home shop, his chapel chairman seeks to obtain additional shifts for him at other shops within the Union's jurisdiction. The journeyman acquires seniority only at his home shop, *i.e.*, the location where he has "slipped up."

In August, 1977, the parties executed Supplemental Agreement on Job Security and Work Arrangements (Supplement) which established an Attrition List setting forth the names of pressroom regular journeymen, priority substitute journeymen, apprentices and flyboys as of January 1, 1977. In general the Supplement provides guaranteed life-time employment for persons named on the Attrition List. Tenorio is not so named.

Supplement Section XI spells out a discharge procedure applicable to attrition employees. It states that employees discharged for any of seven reasons shall be "permanently barred"; this is the only mention of a permanent bar in either the Agreement or the Supplement.[8] Section XI(c) of the Agreement requires Union notification of any discharged employee barred for more than six months.

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[8] In the newspaper industry a discharge is customarily accompanied by a "bar." A less than permanent bar is tantamount to a suspension. It might also be viewed as a discharge subject to possible rehire. A "permanent bar" is equivalent to discharge without right to recall, *i.e.*, the equivalent of a conventional discharge in other industries.

CONTENTIONS OF THE PARTIES

The Union

(1) The Agreement does not permit the permanent bar of a non-attrition employee. While there is a Supplemental Agreement which permits the discharge and permanent bar of attrition employees, this Supplement is not applicable to non-attrition employees. The term "permanent bar" is not mentioned in the Agreement, and Local 4 has always opposed the imposition of a life-time bar.

Because attrition employees enjoy the benefit of a life-time job at five shifts per week, it is logical the parties would impose the stiffer penalty of life-time bar when such an employee is discharged.

(2) Even if it were permitted, a permanent bar is not appropriate under the facts of the instant case. While the Agreement does not specifically impose a just cause limitation upon rejection of Union referrals, such a limitation is implicit. If the Employer had "unfettered discretion" to reject referrals, it would have an ability to frustrate the referral provisions by rejecting all persons referred by the Union and hiring non-union pressmen, thereby undermining the Union.

(3) The Agency's contention it had just cause to reject Tenorio is without merit. His conduct in connection with the Washington Post strike in October, 1975, is too remote in time to support his rejection. The Trimble incident of August 24, 1978, does not support a permanent bar. Administrative Law Judge Pannier found Tenorio did not threaten Trimble.

(4) Tenorio has been subjected to disparate treatment.

(5) Since his discharge in August, 1978, Tenorio has an exemplary work record for various papers in the Bay Area.

(6) The Letter Award does not control the instant case.

(7) The Agency's rejection of Tenorio's referral is tantamount to discharging him from part-time employment. Therefore, the Employer has the burden of proving its action was for just cause.

Moreover, because the basis for the rejection was criminal conduct or moral turpitude, the appropriate proof standard is proof beyond a reasonable doubt.

The Agency

(1) The issue of the Agency's permanent bar of Tenorio has been settled by the parties pursuant to the provisions of the Agreement. At the time of Tenorio's discharge in 1978 the Joint Standing Committee reached a decision upholding the Agency's action. This decision is final and binding upon the parties. The grievance is barred by the doctrine of *res judicata.*

(2) Alternatively, the grievance should be barred under the doctrine of collateral estoppel. The issue presented in the instant case has been decided by another arbitrator in a grievance involving the same union, the same grievant and the same collective bargaining agreement. The only difference in the cases is the employer, a distinction which is not meaningful since the two employers have for many years jointly negotiated their agreements.

(3) The Agency's action did not violate the Agreement. Bargaining history, past practice and the language of the Agreement manifest the intention of the parties to permit the Agency permanently to bar individuals from employment. The Agency may refuse to hire any individual referred by the Union so long as it hires competent pressmen and does not discriminate on the basis of race, sex or union activity. There is no evidence Tenorio was discriminated against on the cited grounds.

DISCUSSION AND CONCLUSIONS

The Agency argues that the JSC decision of September 21, 1978, is *res judicata* and bars consideration of the present grievance. I disagree.

There is no question but that the principle of *res judicata* can appropriately be applied in the context of collective bargaining

grievance procedures.[9] Nor is there any question that under the Agreement the principle can be applied in an appropriate case to decisions of the JSC. Section 21(d) makes such decisions resting upon the affirmative votes of four members "... final and binding upon the parties...." The referant decision states: "[T]he Decision of the Joint Standing Committee was to uphold the discharges." The appropriateness of that decision is not before the Arbitrator in the instant case. Rather, the issue now is the propriety of the Employer's refusal to hire Grievant in 1981. Unlike the situation in *Interco Incorporated,* the ultimate issue before the JSC and the Arbitrator is not identical. Hearing the present grievance on its merits will not have the effect of undermining the JSC decision sustaining the discharge. The Union now seeks to establish that the passage of time and Grievant's good conduct subsequent to discharge make the Agency's refusal to employ him in August, 1981, violative of Section 1(h). No question is raised here regarding the discharge. Tenorio stands discharged for just cause in August, 1978. The Union cannot now seek to challenge the action of the JSC, nor would it be appropriate to undermine that action by seeking or granting a remedy connected to that action. However, the Agreement provides the Union with a cause of action with respect to rejection of referrals. It has the right to grieve the rejection of applicants for employment. From the evidence presented, it would appear this right has not frequently been utilized in situations in which the person rejected has been previously discharged, *e.g.*, the first two occasions Grievant was referred following his discharge. However, the right exists and cannot be defeated merely by pointing to Grievant's prior discharge.

The terminology used in the industry with respect to imposition of discipline tends to cloud analysis of the issue presented here.[10]

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[9] *Automatic Sprinkler, Ltd.*, 62 LA 1051 (Brown, 1974); *Interco Incorporated,* 61 LA 151 (Roberts, 1973).

[10] As noted by counsel for the Agency, a bar is the equivalent of a conventional suspension and a permanent bar is equivalent to conventional discharge.

Section 11(c) provides that a foreman may discharge for incompetency, violation of the Employer's office rules, neglect of duty and to decrease the work force. The section then provides: "Whenever a discharged employee is barred for more than six (6) months, the Union must be notified in writing." Barring an employee for a specific time period is tantamount to suspending him without pay for that period of time. If the Employer were prohibited, as the Union urges, from imposing a "permanent bar," it would be prohibited from discharging any employee covered by the Agreement. Certainly such a contractual limitation is so unusual as not to be inferred absent strong evidence warranting the inference or specific contractual language manifesting such an intent. That languange is not found in the Agreement; nor does the record contain sufficient evidence to warrant an inference that discharges in the conventional sense are proscribed. It is reasonable to conclude the Agency has a right to effect discharges, *i.e.*, to announce at the time of the disciplinary action that the individual is "permanently barred," not subject to rehire. This conclusion is consistent with the Agency's past practice. While the Union may, as it argues, never have agreed to a permanent bar, such bars have been imposed upon Local 4 members without challenge from the Union.

No evidence was offered regarding the bargaining history of Agreement Section 11(c) or Supplement Section XI(c); therefore, interpretation of these sections must come from application of accepted rules of contract interpretation to the contract language and from reasonable inferences drawn from the language.

Supplemental Agreement Section XI(c) states:

> [A]n employee's name shall not be removed from the Attrition List nor shall the employee suffer permanent loss of his guaranteed job except for discharge resulting from the seven (7) reasons set forth below. Employees discharged for other than the reasons set forth below must be reinstated at a time considered appropriate by the Joint Standing Committee and/or the designated arbitrator. . . .

The seven exceptions to the limitation upon the Employer's right to discipline attrition employees are set forth above.[11] The offenses listed are either among the most serious sins an employee can commit in the work place, causes endangering the health and safety of the work force or physical inability of the employee to perform the work.

Since the parties felt it necessary specifically to set forth a general prohibition against permanently barring an attrition employee except as noted, it is logical to conclude no such prohibition exists with respect to non-attrition employees covered by Section 11(c) of the Agreement, particularly in view of the fact Supplement Section XI(c) was the language prepared by the Union. If the situation were otherwise, a single listing of the grounds upon which an attrition employee might be permanently barred would suffice. Moreover, any other conclusion would lead to the anomalous situation of the non-attrition employee having greater security against discipline than the more favored attrition employee and the further anomaly of the Employer being unable to discharge, in the conventional sense, other than attrition employees irrespective of cause.

Thus, Grievant as an non-attrition employee was subject to being discharged (permanently barred) in the conventional sense. This is the action taken by the Agency in August, 1978. The appropriateness of that action is not at issue; the JSC's decision upholding the discharge is final and binding upon the parties. Here, the issue is whether the Agency violated Agreement Section 1(h) by rejecting an applicant (Tenorio) referred by the Union in August, 1981.

The same issue involving the same grievant, the same Agreement and the same Union was presented to Arbitrator Harvey Letter in 1980.[12] Letter found no contract violation in *Northwest's* refusal to hire Tenorio.

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[11] Pages 4-5.

[12] *Northwest Publications, Inc. and San Francisco Web Pressmen and Platemakers' Union, Local No. 4*, an unpublished opinion which was supplied me.

The Agency contends the doctrine of collateral estoppel is appropriate in the instant case, thus precluding its disposition on the merits. I disagree. The cases upon which the Agency relies are not collateral estoppel cases, but rather cases standing for the proposition that great weight should be given a prior arbitration award when the contract, the issue and the union party are identical. "[I]t should be followed by another arbitrator unless he is satisfied that it is clearly wrong."[13] This is a generally accepted proposition to which I subscribe.

Section 1(h) of the Agreement permits the Agency "to reject any applicant for employment referred by the Union." The Agency argues, as did Northwest before Letter, that the only limitations upon its unfettered right to reject applicants are found in Sections 1(c), 1(f), 1(b) and 1(g). Section 1(c) requires the Agency to hire only journeymen who meet certain minimum prevailing standards. The Union agrees to furnish a sufficient number of competent persons; if it is unable to do so, the Agency may hire competent persons, until the Union is able to meet their needs.[14] The Agreement further provides that hiring, whether from Union referrals or off the bank, shall be done in a nondiscriminatory manner, *i.e.*, without regard to race, ethnic origin or sex and without regard to Union membership or its Constitution and By-Laws. Thus, the Agency argues that so long as it did not base its rejection of Tenorio on his ethnic background, his sex or his Union membership or activities, its right to reject him is absolute. For its part the Union contends that the "just cause" standard generally applicable to discharges is an implicit limitation upon the right to reject conferred by Section 1(h).

Newark Newspaper Publishers' Assn., 43 LA 245 (Smertz, 1963), is instructive. The contractual language provided: "The employer retains the right to reject any job applicant referred to [it] by the Union." The Association argued that the cited language gave it a "unilateral and absolute right" to reject job applicants and that it need not explain its reasons for so doing. The contract in *Newark Newspaper Publishers* also contained

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[13] *American-St. Gobain*, 39 LA 306 (McCoy, 1962).

[14] Agreement Section 1(f).

language paralleling that found in Section 1(f). Arbitrator Smertz stated:

> . . . The Union agrees to furnish competent pressmen and the Publisher agrees to employ help from some other source only if and after the Union is unable to furnish the number of competent pressmen required. The intent is obvious—the parties have agreed that competent members of the Union shall be employed first. The contract section upon which the Publisher relies in the instant case is also part of Section 3 and therefore must be read, not independent of the other paragraphs of Section 3, but in conjunction with them. If the Publisher's interpretation of Section 3(c) is accepted, it would make meaningless and reduce to a nullity the application and intent of Section 3(a), because it would empower the Publisher to reject any pressman supplied by the Union, the applicant's competence notwithstanding. I cannot accept an interpretation of Section 3(c) which undermines and makes hollow the meaning and purpose of Section 3(a). Rather, paragraph (c) draws its meaning and import, not only from its own language, but from the other pertinent paragraphs of Section 3. I am persuaded therefore, that the intent of paragraph (c) was not to empower the Publisher to reject any applicant referred by the Union for any reason, thereby nullifying the agreement to employ competent Union members first, but to vest the Publisher with the right to reject a job applicant whom it deems incompetent. [43 LA 246.]

Newark Newspaper Publishers is persuasive, and its rationale is appropriately applied in the instant case. The Agency may reject only those persons referred whom it finds not to be competent even if it satisfies the nondiscriminatiory provision of the Agreement. The nondiscriminatory language in Sections 1(b), (f) and (g) preclude the proscription there set forth from entering into the Employer's determination of competency. In *Northwest* Letter concluded the Employer's rejection of Tenorio was not discriminatory within the contractual meaning of that term. For the reasons he enumerates that conclusion is accepted with respect to the Agency's rejection of Tenorio.

We turn now to the intended meaning of competent and the appropriate standard for its ascertainment. The Agreement provides no guidance; nor is there bargaining history to provide assistance. Absent evidence the parties intended otherwise the words of a contract are to be understood in their ordinary and popular sense (Civil Code §1644). *Webster's Third New International Dictionary* (1981) defines competent as being possessed or characterized by marked or sufficient aptitude, strength or knowledge; satisfactorily or moderately able; without marked weakness or demerit. The *American Heritage Dictionary of the English Language* (1969) defines competent as properly or well qualified, capable; adequate for the purpose, suitable, sufficient. Either definition comports with the general understanding of the term when used in a work place context.

While conceding the Agreement does not spell out a "just cause" limitation upon rejection of referrals, the Union nonetheless urges this standard is appropriate. Its position is assisted by the absence of a specific just cause standard with respect to discharges. Most arbitrators hold an employer to a just cause standard in disciplinary matters when presented with contractual silence regarding the appropriate standard; but such is not the case with respect to grievances resulting from an employer's failure to hire.[15] Rather the test generally applied to refusal to hire cases is whether the employer's action rests upon good faith and is not arbitrary or capricious.[16]

Put in the context of the instant grievance, the question is whether the Agency's refusal to hire Tenorio in August, 1981, was grounded upon a good faith belief that he was not competent to be employed in its pressroom or whether its refusal was capricious and arbitrary. The 1981 refusal to hire Tenorio rests upon the same conduct for which it terminated him in 1978. There is no evidence the Agency made any attempt to ascertain what his behavior patterns were during the three years since his discharge,

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[15] *Reynolds Electrical & Engineering Co.*, 52 LA 327 (Latimer, 1969).

[16] *Matson Navigation Co.*, 29 LA 209 (Cobb, 1957).

or whether he had modified them.[17] Evidence adduced from employers for whom Tenorio has worked since his 1978 discharge manifests a rehabilitation; there have been no complaints about his job performance or his deportment since August, 1978.

The rejection of Tenorio's referral in August, 1981, violated Section 1(h) of the Agreement. The rejection was arbitrary and perfunctory in view of the staleness of the incidents of misconduct upon which the rejection rested and the failure to investigate Tenorio's job-related conduct subsequent to his discharge, which would have evidenced his rehabilitation, and in view of Tenorio's exemplary record subsequent to his discharge by the Agency.

Independent of contractual grievance proceedings, Tenorio and Fowler filed unfair labor practices against the Union, contending Local 4 breached its duty of fair representation in violation of 29 U.S.C. §158(b)(1)(A) in connection with their discharge by the Agency in August, 1978. After Board reversal of the Administrative Law Judge's decision finding a violation (NLRB), the Court of Appeals reversed the Board. *Tenorio v. N.L.R.B.*, F.2d , 110 LRRM 2939 (9th Cir. 1982). Bearing in mind that complaint did not issue on companion charges initially filed against the Agency, *Tenorio v. N.L.R.B.* does not bear directly upon this proceeding except to the extent that Employer awareness by 1981 of the inactive participation of Tenorio in the Trimble incident is clear; thus, further supporting the conclusion that his rejection in 1981 was arbitrary and perfunctory.

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[17] From the record it appears that the only possible bases for considering Tenorio not competent—is what the Agency characterizes as "disruptive behavior," *i.e.*, the one incident in which he and Fowler were involved with Trimble plus his Washington Post conduct.

AWARD

The grievance is sustained. The Agency violated Section 1(h) in refusing to hire Michael Tenorio on August 20, 1981. The matter is remanded to the parties for the purpose of fashioning a remedy. Pursuant to stipulation, jurisdiction is retained in the event the parties are unable to resolve the matter of remedy.

Dated: August 12, 1982

By ROBERT LePROHN
Robert LeProhn, Arbitrator

Appendix F

INDEX

SAN FRANCISCO WEB PRESSMEN AND PLATEMAKERS' UNION No. 4

	Section	Page
Arbitration	21(d)	18
Chairmen Immunity	1(k)	3
Day & Night Shifts	3	5
Death In Family	24	22
Elapsed Time Payment	10	8
Foreman Duty and Authority	11	8
Fully Bargained Contract	22	19
Holidays	16	12
Hours	4	6
Joint Standing Committee	21	16
Jury Duty	25	23
Lobster Shift	3(b)	5
Lunch Time	6	6
Make-Ready Work	13	9
Newsprint Rolls	14	10
No Discrimination	1(b)	1
Overtime	7	7
Prior Agreements	26	23
Priority-Transfers-Layoffs	12	9
Reporting Pay	8	8
Retirement Benefit Plan	19	15
Sick Leave Plan	23	12
Starting Time	9	8
Suspension of Publication	18	15
Term of Contract	27	23
Union Shop	1(e)	1
Vacations	15	10
Wages	2	3
Apprentices	2(e)	5
Flypersons	2(d)	4
First Press Operator	2(a)	3
Increases	2(c)	3
Journeymen	2(c)	3
Pressmen-In-Charge	2(a)	3
Week's Work	4	6
Welfare Trust Fund	20	16
Work Rooms	17	15

AGREEMENT

SAN FRANCISCO WEB PRESSMEN AND PLATEMAKERS' UNION NO. 4

THIS AGREEMENT, made and entered into this 28th day of August 1980, by and between the SAN FRANCISCO NEWSPAPER PRINTING COMPANY, INC., a corporation doing business as the "SAN FRANCISCO NEWSPAPER AGENCY", and the NORTHWEST PUBLICATIONS, INC., Publisher of SAN JOSE MERCURY AND SAN JOSE NEWS, party of the first part hereinafter referred to as the "EMPLOYER", and SAN FRANCISCO WEB PRESSMEN AND PLATEMAKERS' UNION NO. 4, a subordinate Union of the INTERNATIONAL PRINTING AND GRAPHIC COMMUNICATIONS UNION, party of the second part hereinafter referred to as the "UNION".

WITNESSETH:

The parties hereto mutually agree that they will respect and observe all the terms and conditions of this Agreement.

SECTION 1—UNION SHOP

(a) The Employer recognizes the Union as the exclusive bargaining representative for its journeymen, apprentices and flypersons covered by this Agreement with respect to wages, hours and other conditions of employment. Whenever the masculine gender is used in this Agreement it shall be construed to mean either sex.

(b) *No Discrimination*—The Union agrees to cooperate with the Employer's effort to avoid any form of illegal employment discrimination and to achieve a balanced work force, inclusive of racial minorities and women.

(c) The Employer shall employ only journeymen pressmen and foremen who meet the minimum requirements as to training, experience and ability as recognized by prevailing standards. Unless otherwise mutually agreed by the parties hereto, only persons with a minimum of four (4) years practical experience in

all phases of pressroom work shall be considered to have qualifications of a journeyman.

(d) An employee coming into the industry as a beginner shall be required to take the mechanical aptitude test and such other tests as agreed to by the Union and the Employer prior to regular employment. Passing of such test shall be a requirement prior to regular employment and the result of the test shall be made known to the Employer concerned, the Union and the prospective employee. Any applicant who fails the test the first time may have the option of taking one (1) additional test at the earliest opportunity such test is available.

(e) *Union Shop*

It shall be a condition of employment that all employees of the Employer covered by this Agreement who are members of the Union in good standing on the execution date of this Agreement shall remain members in good standing and those who are not members on the execution date of this Agreement shall, on the 30th day following the execution date of this Agreement, become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its execution date shall, on the 30th day following the beginning of such employment become and remain members in good standing in the Union.

(f) The Union agrees to furnish at all times a sufficient number of competent persons as may be required by the Employer for the proper operation of its pressrooms, and in case of the Union's inability to do this at any time, the foreman of any office shall have the privilege of engaging such persons as he may see fit to temporarily make up the necessary quota until such time as the Union can furnish the persons required, and the foreman shall not be required to replace such outside persons with persons referred by the Union in case such persons report later during that shift. Foremen shall exercise their authority in a non-discriminatory manner, under law and this contract, and no foreman shall be disciplined by the Union for any act within the scope of his authority.

(g) The Union's referral of applicants for jobs with the Employer and the hiring and terms of employment of such applicants, except as hereinbefore set forth, shall be on a non-discriminatory basis and shall not be based on, or in any way affected by, Union membership, by-laws, rules, regulations, constitutional provisions, or any other aspect or obligation of Union membership, policies or requirements.

(h) The Employer shall have the right to reject any applicant for employment referred by the Union. Grievances arising from the rejection of applicants for employment shall be referred to the Joint Standing Committee for settlement.

(i) The parties hereto agree to recognize and accept mutual responsibility in the establishment and maintenance of an adequate system of apprenticeships, and guarantees are hereby given by the parties hereto, to give apprentices ample opportunity for the development of the necessary mechanical experience in order to assure competent craftsmanship.

A Joint Apprentice Committee of the parties hereto is hereby authorized to make and recommend for approval by the principals herein, a plan of apprentice training which will effectuate the purpose of this section.

(j) All work within the jurisdiction of the Union shall be performed only by journeymen, apprentices and flypersons.

(k) *Immunity of Chairmen* Chapel Chairmen shall be exempt from discipline or discharge in the performance of their usual Union duties so long as such activity does not interfere with the publication of the newspapers. Time spent in the performance of Union duties will be in accordance with past practice which shall not be extended.

SECTION 2—WAGE SCALES

Wages in the newspaper web pressrooms of the Employer shall be as follows:

(a) *Pressmen-in-Charge* and such journeymen brought in ahead of or with the regular crew, under provisions of Section 13, as a make-ready crew for color on black presses shall be paid ten

percent (10%) above journeymen's rate per day and/or night. Journeymen brought in ahead of or held after regular crew as a wash-up crew, only to do work such as cleaning fountains and rollers, shall receive the regular journeymen's rate of pay.

First Press Operator (San Francisco only) Effective July 28, 1980 the First Press Operator shall be paid three dollars ($3.00) per shift worked in addition to the ten percent (10%) paid Pressmen-in-Charge above the journeymen's rate per day and/or night.

(b) Journeymen brought in for a roller or blanket crew ahead of, during or held after the shift shall be paid ten percent (10%) above the journeymen's rate per day and/or night.

(c) *Journeymen*

(1) Effective January 1, 1980, to and including September 14, 1980, $83.44 per day for day work and $85.04 per night for night work and $85.04 per lobster shift work.

(2) Effective September 15, 1980, to and including January 31, 1981, $87.44 per day for day work and $89.04 per night for night work and $89.04 per lobster shift work.

(3) Effective February 1, 1981, to and including July 31, 1981, there shall be an increase of $20.00 per week for all journeymen employees covered by this Agreement. The Union shall have the right to allocate all or part of said increase to wages or fringe benefits subject to restrictions set forth in paragraph (7) below.

(4) Effective August 1, 1981, to and including December 31, 1981, there shall be an increase of $10.00 per week for all journeymen employees covered by this Agreement. The Union shall have the right to allocate all or part of said increase to wages or fringe benefits subject to restrictions set forth in paragraph (7) below.

(5) Effective January 1, 1982, to and including June 30, 1982, there shall be an increase of $20.00 per week for all journeymen employees covered by this Agreement. The Union shall have the right to allocate all or part of said increase to wages or fringe benefits subject to restrictions set forth in paragraph (7) below.

(6) Effective July 1, 1982, to and including December 31, 1982, there shall be an increase of $15.00 per week for all journeymen employees covered by this Agreement. The Union shall have the right to allocate all or part of said increase to wages or fringe benefits subject to restrictions set forth in paragraph (7) below.

(7) The Union shall have the right by written notice to the Employer given 60 days proir to February 1, 1981, August 1, 1981, January 1, 1982, or July 1, 1982, to allocate all or part of the general increases provided for in paragraphs (3), (4), (5) and (6) above, to additional Employer contributions to Health and Welfare of Pension Plans.

In the event part of said general increases are allocated by the Union for the purpose of additional Employer contributions to Health and Welfare or Pensions Plans then effective on said dates each of the wage rates set forth in the scale of wages in Section 2(c) (2) above shall be increased by the amount of the balance of said increase that is not so allocated to said benefits and the scale of wages shall be changed accordingly. All disputes shall be adjudicated in the same manner as provided for the settlement of any other dispute under Section 21 of this Agreement.

(d) (1) *Registered Flypersons*:

Registered Flypersons shall receive 65% of the journeyman's rate per day, night, and/or lobster shift. After serving two (2) years, Registered Flypersons shall be paid as follows if no apprentice opening exists:

3rd year—70% of the Journeyman's rate per day, night and/or lobster shift;

4th year—75% of the Journeyman's rate per day, night and/or lobster shift.

Upon receiving his/her apprenticeship he/she shall receive 75% of the Journeyman's rate per day, night and/or lobster shift for the 1st and 2nd years of his/her apprenticeship after which his/her rate of pay shall be:

3rd year—80% of Journeyman's rate per day, night and/or lobster shift;

4th year—90% of Journeyman's rate per day, night and/or lobster shift.

(2) *Flypersons:*

Sixty percent (60%) of the Journeyman's rate per day, night and/or lobster shift

(e) *Apprentices*

First year 65% of Journeyman's rate; second year, 70%; third year, 80%, fourth year, 90%, per day, night and/or lobster shift.

SECTION 3—DAY AND NIGHT SHIFTS

(a) On any shift beginning and ending between the hours of 7:00 a.m. and 7:00 p.m., the day rates shall be paid. On any shift beginning or ending between the hours 7:00 p.m. and 7:00 a.m., the night rates shall be paid. Employees may be called at different hours any time during either of the 12-hour periods or during the hours of one period and be required to work into the hours of another period and in the latter event, the night rate of wages shall be paid for such shift. In no case shall overtime on a day shift be construed as making night rates applicable to work which in the absence of overtime may be at day rates. The purpose of designating day and night hours is to determine the rate of pay that applies and under no circumstances does the overtime rate apply until the full number of hours provided for a shift have been completed.

(b) *Lobster Shift*—A lobster shift may be established between 12:01 a.m. and 5:59 a.m. The unit of hours constituting a lobster shift shall be six (6) hours and fifteen (15) minutes, exclusive of thirty (30) minutes for lunch and the night shift rate of wages shall be paid for such shift.

SECTION 4—HOURS

Seven (7) hours shall constitute a day's or night's work. Six (6) hours and fifteen (15) minutes shall constitute a lobster shift's work. The unit of hours that shall constitute a day's work, night's work and a lobster shift's work shall be consecutive, exclusive of thirty (30) minutes for lunch.

SECTION 5—WEEK'S WORK

(a) Five (5) days or five (5) nights or five (5) lobster shifts or a combination of days, nights and lobster shifts equivalent to five (5) in one week shall constitute a week's work. Employees shall be paid for the actual number of days worked each week.

(b) Foremen shall not be limited in the number of shifts they shall be permitted to work at all times; provided a foreman may not displace a journeyman as a member of a crew in excess of five (5) shifts in one week.

SECTION 6—LUNCH TIME

FIRST LUNCH PERIOD

(a) Except as provided in sub-Section (c) hereof, an interval of thirty (30) minutes which shall not be paid for shall be allowed each day and/or night and/or lobster shift for lunch within a reasonable period after starting time. A reasonable period means no earlier than two (2) hours and not more than four and one-half (4½) hours after starting time.

SECOND LUNCH PERIOD

(b) (San Francisco Only) After the first lunch period, thirty (30) minutes for lunch shall be allowed and paid for at the overtime rate after each period of not less than three (3) hours nor more than five (5) hours of continuous time worked. Employees who have worked five (5) hours after the end of the first lunch period only may be required to continue to work for not exceeding two (2) hours in order to complete the daily press run and in this event shall be compensated as follows:

Running Times	Rate of Pay
15 minutes	45 minutes overtime
30 minutes	1 hour overtime
45 minutes	1¾ hours overtime
1 hour	2 hours overtime
1¼ hours	2¼ hours overtime
1½ hours	2½ hours overtime
1¾ hours	2¾ hours overtime
2 hours	3 hours overtime

(c) When employees are brought in ahead of the crew for color make-ready, such employees may be sent to lunch prior to the regular starting time of the crew. Any such lunch period shall be paid for by the office when required, and it is agreed that when taken shall not be designated either as a first or second lunch period in the application of Section 6(a) and (b) hereof.

THIRD LUNCH PERIOD

(d) In the event a third lunch period is required, all employees who did not work through a second lunch period who have worked five (5) hours after the end of the second lunch period may be required to continue to work for a period not in excess of thirty (30) minutes after the end of said five hour period in order to complete the daily press run and shall be paid a minimum of one (1) hour at the overtime rate. If it is foreseen that more than thirty (30) minutes will be required to complete the daily press run, the third lunch period shall be taken and paid for by the office, provided employees shall return to work directly after the expiration of the one-half (½) hour lunch and complete the daily press run.

SECTION 7—OVERTIME

(a) Work which begins immediately prior to an employee's starting time and work which begins immediately after an employee's scheduled quitting time shall be paid for at overtime rates. Except as may otherwise be expressly provided in this agreement, all other time is straight time. Overtime shall be computed in fifteen (15) minute periods. That is to say, for fifteen

(15) minutes of overtime or less, an employee shall be credited with fifteen (15) minutes overtime; for thirty (30) minutes of overtime, or for more than fifteen (15) minutes overtime and less than thirty (30) minutes overtime, an employee shall be credited with thirty (30) minutes overtime. Overtime shall be paid for at the rate of price and one-half.

(b) When any individual employee is required to work the sixth shift for the same Employer within the financial week, he/she shall be paid overtime for such work.

(c) Employees who have worked a shift and are recalled by the office to complete a shift that was presumed completed, to run a re-order or an extra of the same issue, shall be paid overtime on a continuous basis as though no break in operation had occurred.

(d) Overtime in the pressroom will be distributed as equitably as it is possible to do so and be consistent with good operation.

SECTION 8—REPORTING PAY

Except in the case of emergency, when employees are directed by the Foreman to report for work and do so report, they shall receive the wages specified for each day's, night's work or lobster shift's worked. The interpretation of "emergency" is an unusual condition due to circumstances over which the Employer has no control.

SECTION 9—STARTING TIME

(a) (*San Francisco Only*) All work performed before the regularly scheduled starting time of any shift shall be paid for at price and one-half the regular rate for the shift, (if holiday, the holiday overtime rate shall apply). No employee's starting time shall be changed more than one and one-half (1½) hours.

SECTION 10—ELAPSED TIME PAYMENT

(a) Eight (8) hours shall elapse between the time a person quits work and time he/she goes to work again in the same shop. If a person is required to return to work for the same Employer before the eight (8) hour period has elapsed, he/she shall be paid $2.00 for each hour and/or fraction thereof for the time worked

before the eight (8) hours shall have elapsed in addition to his/her pay for that shift.

(b) The Union, if requested by the Employer, agrees that it will make every possible effort to furnish persons so that no person shall be assigned to work a double header.

SECTION 11—FOREMAN—DUTY AND AUTHORITY

(a) All orders for the pressrooms shall emanate from the foreman. The foreman shall have full authority to carry out all the instructions of the Employer or his representative. In event any dispute arises as a result of the foreman carrying out the instructions of the Employer that cannot be settled between the foreman and the chapel chairman, the dispute shall be referred to Step (2) of the grievance procedure as provided for in Section 21(a).

(b) In an emergency, the foreman shall have the right to take the place of any employee on any press in order to operate the press.

(c) The foreman may discharge for incompetency, violation of the Employer's office rules (which shall be conspicuously posted), neglect of duty and to decrease the force. Whenever a discharged employee is barred for more than six (6) months, the Union must be notified in writing.

(d) The time at which employees shall report for work shall be designated by the foreman. All or any part of a crew may be brought in before and held after regular hours to change blankets and top sheets and set rollers. All employees of the pressroom shall faithfully perform any press work to which they may be assigned by the foreman.

(e) The foreman may designate an assistant foreman on each shift who shall have full authority of the foreman, except that the assistant foreman may discipline but may not discharge employees.

(f) The authority of the foreman shall be exercised in a nondiscriminatory manner under law and this Agreement. The foreman and the assistant foreman in charge on each shift shall not be subject to fine, discipline or expulsion by the Union for any

act in the performance of his/her duties, when such action is authorized by this Agreement, or for carrying out instructions of the Employer. When there is a difference of opinion as to the interpretation of this Agreement, such difference of opinion shall be subject to review under the procedure set forth in the Joint Standing Committee provisions of this Agreement.

SECTION 12—PRIORITY - TRANSFERS - LAYOFFS

(a) In filling regular positions and in the operation of the sub line, priority shall govern.

(b) The particular days and/or nights constituting a regular situation shall be designated by the foreman. The foreman may make changes in days off and transfer pressmen who do not have a mark-up from day work to night work provided such transfers are not discriminatory.

(c) There shall be mutual agreement between the foreman and the chapel chairman before an employee scheduled for any shift be permitted to lay off.

(d) No journeyman, except for injury or illness, may check out if a penalty is thereby created.

(e) Foreman and floormen shall be exempt from the provisions of sub-Section (b) hereof.

SECTION 13—MAKE-READY WORK

Make-ready for color is defined as the preparatory work in each shop which is necessary to obtain proof at the folder that color pages for the run are in register and it shall consist of: putting on the black key plates; putting on the color plates; registering the plates; changing feeders on color units; if necessary, cleaning and changing ink fountains to be used in printing the color; changing the reel and inserting one (1) roll in each reel using color if necessary to obtain register; leading the web for the color units only; changing angle bars to effect the desired color lead. (it is agreed the language set forth in this sub-Section does not change the present practices for color make-ready in each shop.)

SECTION 14—NEWSPRINT ROLLS

(a) (*San Francisco Only*) Rolls shall be delivered on dollies to or as close as possible to the press with roll heads, wrappers and excessive damage removed.

(b) (*San Jose Only*) Rolls shall be delivered on dollies to or as close as possible to the press with roll heads and excessive damage removed.

SECTION 15—VACATIONS

The Employer shall grant to employees who have worked in the pressroom during the life of this Agreement, vacation with pay on the following basis:

(a) FOUR WEEKS VACATION

Each employee who has completed five (5) or more years of continuous service for the same Employer previous to January 1, 1980 (effective January 1, 1981 four (4) or more years of continuous service), or January 1 of a subsequent year, and who was regularly employed during the preceding calendar year AT LEAST 210 shifts, shall receive four (4) weeks (twenty (20) days) vacation with pay during the calendar year of 1980, or any subsequent year thereafter.

All other employees who have completed five (5) or more years of continuous service for the same Employer previous to January 1, 1980 (effective January 1, 1981 four (4) or more years of continuous service), or January 1 of a subsequent year, and who were regularly employed during the preceding calendar year LESS THAN 210 shifts, shall be granted during the calendar year 1980, or any subsequent year thereafter, 1/12th of a day's pay for each day or night worked provided no such employee shall have credits in excess of twenty (20) days in any twelve (12) month period.

(b) THREE WEEKS VACATION

Employees with LESS THAN five (5) years priority (effective January 1, 1981 four (4) years priority) who were regularly employed during the preceding calendar year AT LEAST 215 shifts, shall receive three weeks (fifteen (15) days) vacation with

pay during the calendar year of 1980, or any subsequent year thereafter.

Employees with LESS THAN five (5) years priority (effective January 1, 1981 four (4) years priority) who were regularly employed during the preceding calendar year LESS THAN 215 shifts shall be entitled to 1/16th of a day's pay for each day or night worked for the Employer during the entire calendar year of 1979, or any subsequent year thereafter, provided, no such employee shall have credit in excess of fifteen (15) days in the twelve (12) month period.

(c) Regularly scheduled employees who in any one week work four (4) shifts and are required by the office to work twelve (12) or more hours of overtime shall receive vacation credits for that week in the same manner as though they had worked five (5) regular shifts.

(d) Employees shall be given pro rata of vacation earned at the end of any calendar year so as to place them on a calendar basis.

(e) It is agreed that the spirit and purpose of granting vacations is to limit them to employees working at the trade as employees in the pressrooms of Employers operating under this Agreement.

(f) Anyone leaving his place of employment voluntarily or otherwise shall be entitled to and receive his vacation credit pay on a pro rata basis at the next regular payroll day or as required by law. Vacation credits as herein provided shall be pro rated with due consideration to the classifications in which the employee worked during the previous calendar year.

(g) The vacation schedule shall be arranged by the office between January 1 and December 31. The vacation schedule of each employee shall be posted on December 1st of the calendar year preceding the year in which the vacation is to be taken.

(h) Pay for vacation shall be at the rate which the employee is receiving at the time he starts his vacation. On request, employees shall be given their vacation checks one (1) week prior to commencement of the vacation.

(i) The days of the vacation shall be consecutive. Vacations shall be scheduled with due consideration to priority in the pressroom. By mutual agreement between the individual employee and the foreman, vacations may be split provided there shall be not more than four (4) splits each on a one (1) week's basis.

(j) Should an employee covered by this Agreement die while a member of a pressroom chapel operating under this Agreement, the Employer shall pay to said employee's beneficiary such vacation credit as had accrued upon a pro rata basis, such money to be held in escrow until proper beneficiaries have been established.

(k) When a holiday falls within an employee's vacation period he/she shall be given an additional day (with pay) as a part of his/her vacation.

(l) Priority substitutes who notify the foreman through the chairman, shall be permitted to count any day(s) they call in for work and are not hired, as vacation, and be paid vacation pay for any vacation accrued in previous calendar year up to a maximum of five (5) days in a financial week.

To be eligible to receive such vacation pay the substitute must call in for work on a regular basis.

Substitutes who notify the foreman through the chairman of their desire to participate in this program will, following such notification, continue to receive vacation pay for days they call in for work, but do not work, until such time as the substitute's maximum earned vacation credits have been exhausted.

SECTION 16—HOLIDAYS

(a) On the following days: New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day, four (4) hours and thirty (30) minutes continuous work shall constitute a day's work.

In addition to the seven (7) holidays enumerated above, the birthday of each employee who has been employed and maintained his/her priority for one (1) year or more in the pressrom

shall be considered as a holiday for such employee. In any week during the calendar year in which an employee's birthday falls, he/she shall receive one (1) additional day's pay at his regular straight time daily rate. When the birthday holiday falls on the employee's off day or within an employee's vacation period he/she shall also be paid a day's pay at his/her regular straight time daily rate in lieu of such additional day off. An employee required to work on his/her birthday shall be paid the straight time hourly rate for all hours worked up to a maximum of the unit of hours that constitutes a shift on any ordinary working day. Time worked in excess of said unit of hours that constitutes a shift shall be paid at price and one-half the straight time rate of pay that is paid for on any ordinary working day. When such birthday falls on one of the holidays enumerated in this section, said employee shall receive and additional day off, which shall be paid for at his/her regular straight time daily rate, the day off to be selected by mutual agreement and taken within thirty (30) days thereafter with the understanding said employee need not be replaced. If mutual agreement is not reached, the employee shall be paid a day's pay at his/her regular straight time daily rate in lieu of such additional day off.

(b) Pay for work on a recognized holiday shall be as follows:

One (1) day's straight time pay plus a minimum of four and one-half (4½) hours at straight time hourly rate. This straight time hourly rate is to continue for all time required by the office up to a maximum of the unit of hours that constitutes a shift on any ordinary working day. Any time worked in excess of said unit of hours that constitutes a shift shall be paid at two and one-half (2½) times the straight time rate of pay that is paid for on any ordinary working day.

(c) In event employees are required by the office to work in excess of four and one-half (4½) hours, then a lunch period of thirty (30) minutes shall be taken and shall be paid for by the office at the overtime rate of pay as set forth in this Section. After the first holiday lunch period, a second holiday lunch period shall be taken four and one-half (4½) hours after the first holiday lunch period.

(d) A holiday within the meaning of this Section shall begin at 5 a.m. of the day of observance and continue until 5 a.m. of the next day. If the holidays enumerated should fall upon Sunday and the following day is declared to be or is by law a holiday, this provision as to four (4) hours and thirty (30) minutes constituting a day's work shall apply only to the following day or the actual day observed as the holiday.

(e) It is further provided that time worked on a holiday and paid for at holiday rates shall not be subject to any of the other premium rate provisions in this Agreement.

(f) In the event an Employer covered by this Agreement fails to publish or no work is performed in the pressroom on any of the aforementioned holidays, those employees of the pressroom who normally would have been scheduled to work on that day shall be paid for the holiday at their regular straight time rate of pay.

(g) Holiday shifts shall be the day shift worked on the day of observance and the night shift beginning on the day of observance.

(h) During a week in which a holiday occurs, part of the work involved in the printing of supplements may be shifted from one day to another; provided, any crew or crews normally scheduled to perform such work on the actual day observed as a holiday shall work a minimum of four and one-half (4½) hours on such holiday, or at the option of the Employer, be required to work in excess of four and one-half (4½) hours and be paid in accordance with sub-Section (b) and (c) hereof.

In the event printing of supplements during a week in which a holiday occurs is eliminated or such sections are consolidated, then no such work need be performed on the holiday itself.

The printing in advance of main news sections and classified sections shall not be construed as being any part of the printing of a supplement.

(i) In event make-ready crews on color are to be utilized on holidays, such crews shall be subject to the following conditions governing the first lunch period:

(1) If spot colors are to be used, make-ready crews on color except as hereinafter provided, shall be brought in a minimum of one and one-half (1½) hours before the posted starting time for regular crews and thirty (30) minutes of this one and one-half (1½) hours shall be utilized for a thirty (30) minute lunch period.

(2) If multiple color is to be used, make-ready crews on color, except as hereinafter provided, shall be brought in a minimum of two and one-half (2½) hours before the posted starting time for the regular crews and thirty (30) minutes of this two and one-half (2½) hours shall be utilized for a thirty (30) minute lunch period.

(3) It is agreed that paragraphs (1) and (2) hereof shall have no application in event the make-ready crew on color is sent to lunch at the same time as the regular crew.

(j) When a recognized holiday or the day of observance falls on an employees' scheduled off day, said employee shall receive an additional day off which shall be paid for at his/her regular straight-time daily rate, the day off to be selected by mutual agreement with the foreman and taken on his/her last scheduled shift prior to the holiday or within thirty (30) days after the holiday. At the option of the foreman, the employee may be paid a days' pay at higher regular straight-time daily rate in lieu of such additional day off.

(k) An employee holding priority who is not required to work on any of the holidays set forth in this section and who has made himself/herself available for work in the Employer's pressroom at least thirty-five days (35) days in the eight (8) weeks immediately preceding a holiday and who has worked a minimum of twenty (20) shifts during this period, shall receive holiday pay of one (1) straight-time shift in the financial week immediately following the holiday.

SECTION 17—WORK ROOMS

(a) The Employer agrees to furnish at all times a healthful, sufficiently ventilated, properly heated and well-lighted place for

the performance of all work done in its pressrooms and a lunch room and a washroom at the plant.

(b) The Employer and the Union recognize their mutual obligation to assist in the prevention, correction and elimination of all unhealthy and unsafe working conditions and practices.

SECTION 18—SUSPENSION OF PUBLICATION

(a) In the event of a permanent suspension of publication of any newspaper or the permanent amalgamation of newspapers by a signee of this Agreement, all employees who have held situations for six (6) months or longer and who are discharged through this cause and not reemployed as full-time situation holders by merged paper; shall receive payment of four (4) weeks (20 days) wages at their regular straight time rate of pay or one (1) week of pay for every year of continuous service as a situation holder with the Employer, to a maximum of twelve (12) weeks of pay, whichever is greater, at their regular straight time rate of pay.

(b) It is agreed that the conditions set forth in sub-Section (a) hereof shall have the following application:

(1) Those employees "who have held situations for six (6) months or longer" shall be interpreted as referring to those employees who have held situations for at least six (6) months in accordance with Section I, E (Mark-Ups) of the Supplemental Agreement on Job Security and Work Arrangements; and

(2) Any other employees who have held priority in a suspended or merged newspaper, shall be entitled to the payment provided in sub-Section (a) if during the six (6) months prior to said suspension or merger, he/she had worked a total of 110 shifts in that shop and provided further, the combined newspaper does not have five (5) shifts of work per week for any such employee for a period of four (4) weeks immediately following the merger, combination, amalgamation or consolidation;

(c) This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Employer.

SECTION 19—RETIREMENT BENEFIT PLAN

(a) In addition to the wage scales herein set forth in this Agreement, the Employer agrees to continue to contribute to the I.P. & G.C.U.-Employer Retirement Fund the sum of three dollars ($3.00) per straight time journeyman's shift actually worked for each journeyman employee covered by this Agreement.

(b) The Employer shall also continue to contribute to said I.P. & G.C.U.—Employer Retirement Plan for each straight time shift worked by apprentices, registered flypersons, and flypersons a sum equal to the percentage of three dollars ($3.00) as reflected in the pay scale of apprentices, registered flypersons and flypersons in Section 2 of this Agreement.

(c) No payment shall be made for any shift worked in excess of five (5) straight time shifts by any employee covered during any payroll week. The Employer shall have no financial liability beyond the payment as provided in paragraphs (a) and (b) hereof. Payments to said I.P. & G.C.U.—Employer Retirement Fund shall be made monthly. Days spent on vacation (not to exceed five (5) days in any calendar week) shall be considered days worked for the purpose of making payments into the I.P. & G.C.U.—Employer Retirement Fund.

SECTION 20—WELFARE TRUST FUND

(a) In addition to the wages paid under the terms of this Agreement, the Employer shall for the period herein designated pay into a Welfare Trust Fund at the end of each month in accordance with the following schedule:

(1) From and after January 1, 1980, six dollars and three cents ($6.03) per straight time shift actually worked by each of its employees covered by this Agreement.

(2) These payments shall not apply or be made for any work in excess of five (5) straight time shifts for any one employee in any one plant in any one payroll week.

(3) The per shift payments set forth under paragraphs (1) and (2) above will be made for earned and scheduled vacations at the time the vacations is taken.

(b) The Employer shall have no financial liability beyond the payments as provided in paragraph (a) hereof.

(c) Disbursements from the Welfare Trust Fund shall be limited to those provided for in the Trust Agreement existing between the parties.

(d) It is agreed in relation to members of the Union, employed by San Francisco Web Pressman and Platemakers' Union No. 4, the Union may make payment into the Trust Fund as set forth in the schedule provided in paragraph (a) hereof with a maximum of five (5) shifts per week for each member so engaged.

SECTION 21—JOINT STANDING COMMITTEE

(a) In the event that a grievance arises between the Union and the Employer or an employee and the Employer, the steps to be utilized in resolving the grievance shall be as set forth in this Section. A grievance shall be considered to include, but not limited to, a dispute over any action of the foreman in carrying out any instructions of the Employer, all disputes arising under this Collective Bargaining Agreement, all disputes regarding the interpretation of any portion of the Collective Bargaining Agreement, all disputes between the Employer and the Chapel, all disputes regarding discharges and disciplining of employees and any and all disputes between the parties hereto.

(1) In the first step of this procedure, the chapel chairman shall meet with the foreman in an effort to resolve the grievance.

(2) If the grievance is not resolved in Step 1 (above), the chapel chairman and the Union's area representative shall meet with the foreman and attempt to resolve the grievance. This meeting shall be scheduled within seventy-two (72) hours if the matter cannot be resolved in Step 1 (above) of this procedure.

(3) Should the first two steps fail to resolve the grievance, the grievance shall be referred in writing to the Joint Standing Committee within seventy-two (72) hours of the meeting referred to in Step 2 (above), unless such time limit is otherwise mutually extended.

(b) Immediately after the execution of this Agreement a Joint Standing Committee of four (4) members shall be appointed, two (2) members of said committee to be named by the party of the first part and two (2) members by the party of the second part. Immediately after the members of the Joint Standing Committee have been named, the Employer shall send the names and addresses of its representatives on the Joint Standing Committee to the Union, and the Union shall send the names and addresses of its representatives on the Joint Standing Committee to the Employer. In case of vacancy on said Joint Standing Committee from any cause, said vacancy shall be filled immediately by the appointment of a new member by the party in whose representation on the Joint Standing Committee the vacancy occurs. Each party shall notify the other party immediately of any change in its representation on the Joint Standing Committee. If at any time either party desires that one of its representatives on the Joint Standing Committee shall appear in the capacity of advocate before the Board of Arbitration provided for in this Section, said representative shall resign from the Committee and a new representative shall be appointed in the manner hereinbefore provided.

(c) The Joint Standing Committee must meet within five (5) days from the date on which the members of said committee are notified in writing by either party, through its authorized representative, that a meeting is desired, and shall proceed forthwith to attempt to settle any question raised by either party. Except that the Joint Standing Committee shall have no jurisdiction over the settlement of a new wage scale and a new contract to become effective at the expiration of this Agreement, as hereinafter provided, said committee shall otherwise have complete power to determine its jurisdiction. Such jurisdiction, if in dispute, shall be subject to arbitration in the manner in this Section provided.

(d) It shall require the affirmative notes of the four (4) members of the Joint Standing Committee to decide the issues,

and the decision of the Joint Standing Committee shall be final and binding on the parties hereto. If the Joint Standing Committee cannot reach an agreement within ten (10) days from the date on which a dispute is first considered by it, at the request of either party hereto, said dispute may be moved to arbitration in accordance with procedures set forth in sub-Section 21 (f) hereof. The members of the Joint Standing Committee shall form a Board of Arbitration and shall select a fifth (5th) member who shall be a disinterested party and who shall act as Chairman of the Board.

(e) In the event that agreement cannot be reached on an impartial chairman within a ten (10) working day time limit, thereafter the Federal Mediation and Conciliation Service shall be requested to submit the names of five (5) established arbitrators who have previously been selected as arbitrators in disputes involving the newspaper business. The Employer and the Union shall by lot select one named person to act as Chairman. This selection of the impartial chairman shall be made within six (6) days after the Employer and the Union members of the Board of Arbitration cannot reach agreement on an impartial chairman. The selection of an impartial chairman so made will be equally effective as if made directly by the parties hereto.

(f) The party seeking arbitration shall state in the written notice or arbitration whether the procedure in paragraph (1) or (2) below shall be followed:

(1) *Informal Hearing:*

The hearing shall be without transcript and without formalities normally attendant upon a formal arbitration. The arbitrator shall in such cases as he deems possible issue his decision and remedies at the conclusion of the hearing. Otherwise, he shall issue his decision and remedies as soon as possible. In either instance he shall reduce his decision and remedies to writing and at the request of either party shall include an opinion.

(2) *Formal Hearing:*

The hearings shall be with a transcript and the normal formalities attendant upon a formal arbitration. The arbitrator shall issue his opinion, decision and remedy as soon as possible after receipt of the transcript and briefs if they are filed. The arbitrator may at his option issue a Bench Award upon the conclusion of the hearing.

(g) The "Informal Hearing" procedure should be limited to cases where there is no substantial difference between the parties as to the fact of the grievance and where a large number of witnesses would not be required in the presentation of the case; otherwise the "Formal Hearing" procedure should be invoked. If dispute arises as to which procedure to follow, then such dispute will be presented to the arbitrator to be decided before the arbitration begins.

(h) The decisions including remedies issued by the arbitrator shall be final and binding. All issues concerning arbitrability shall be submitted only to the arbitrator for decision and such decision shall be final and binding.

(i) The arbitrator shall follow rules of procedure agreed to by the parties, but in the absence of agreement thereon, the arbitrator shall determine the procedure.

(j) Expenses of arbitration which are jointly incurred shall be shared equally by the parties, except that neither party shall be required to pay any part of the cost of a stenographic record without its consent, provided that failure of a party to agree to share the cost of such stenographic record shall be deemed a waiver of such party's right of access to the record.

(k) Pending final decision by the Joint Standing Committee or arbitrator in any case, work shall continue in all shops without interruption and under the conditions prevailing prior to the time the dispute arose.

(l) Saturdays, Sundays and holidays shall not be counted in applying any of the time limits stated in this Section.

SECTION 22—FULLY BARGAINED CONTRACT

The parties hereto agree that they have bargained fully on wages, hours and all other conditions of employment and have settled all differences for the term of this Agreement.

SECTION 23—SUPPLEMENTAL UCD AND WORKERS' COMPENSATION SICK LEAVE PLAN

Effective January 1, 1980 to and including June 29, 1980, benefits shall be paid in accordance with the terms of Section 23 of the Collective Bargaining Agreement dated July 28, 1977. Effective on and after June 30, 1980, benefits shall be paid in accordance with the terms set forth below in sub-Sections 23 (a) through (d).

(a) General Purpose

The general objective of this plan is to provide employees wage stability during long term illness by supplementing the benefits received through the State Unemployment Compensation Disability Program and Workers' Compensation Law so as to provide up to eighty percent (80%) of their gross weekly base pay computed on a seven (7) day week. Example: Eighty percent (80%) of the gross weekly base pay divided by seven (7).

(b) Eligibility and Duration of Benefits

(1) Eligibility and duration of benefits for the entire benefit year shall be computed on the employee's anniversary date.

(2) Duration of benefits shall be as follows:

Length of Service	Number of Days of Supplemental Benefits
Less than 1 year	None
1 year but less than 2 years	14 calendar days
2 years but less than 3 years	28 calendar days
3 years but less than 5 years	56 calendar days
5 years but less than 10 years	91 calendar days
10 years and over	182 calendar days

(3) The benefits of this plan shall not be paid to any employee who ceases active full time work for any reason other than an

illness or accident for which he is paid benefits under the State UCD Program or Workers' Compensation Law. In exception to this paragraph, where an employee is on layoff and is recalled to work but is unable to return to work by reason of a disability which qualified under this plan he shall be eligible for benefits starting on the date he was to have returned to work as a result of the recall.

(c) Computation of UCD and Workers' Compensation Benefits

(1) Each eligible employee shall be entitled to receive supplemental UCD or Workers' Compensation benefits in any benefit year, up to the number of days as determined in paragraph (b).

(2) The formula for computing supplemental UCD or Workers' Compensation benefits for each day of qualified absence is as follows:

(i) Determine eighty percent (80%) of daily gross pay as follows:

80% of the gross weekly base pay divided by seven (7).

(ii) Determine number of days paid UCD or Workers' Compensation absence and amount of UCD or Workers' Compensation payment from copy of payment slip furnished by employee.

(iii) Determine supplemental UCD or Workers' Compensation benefit pay due employee by multiplying daily gross pay figures as determined in paragraph (i) above by the number of days absence paid for by UCD or Workers' Compensation (from slip furnished by employee) to determine employee's gross pay figure. Subtract amount paid by UCD or Workers' Compensation (on slip furnished by employee) from gross pay figure. Pay employee the difference as supplemental UCD or Workers' Compensation benefit pay required by this program.

In making the above computations the base classification shift rate of the employee shall be used excluding overtime or any other payments other than those set forth in the scale of wages.

(3) To be paid supplemental UCD or Workers' Compensation benefit pay under this plan, the employee must be eligible for, be paid, and present to his Employer, not later than thirty (30) calendar days after his/her return to work, a copy of the State UCD or Workers' Compensation benefits paid to him/her.

(4) The Employer's sole obligation under this Agreement is to provide the benefits outlined herein and there shall be no duplicate or overlapping benefits paid under this Agreement; i.e., no supplemental pay shall be paid for any day for which the employee is also entitled to pay for any reason under this Agreement.

(5) Only full day UCD or Workers' Compensation payments will be made. No supplemental pay shall be paid for partial work days lost.

(d) General Provisions

(1) The total benefits to which an employee is entitled under this plan can be applied only once during the benefit year. If qualified UCD or Workers' Compensation absence occurs more than once during a benefit year the maximum benefits to which any employee is entitled will be reduced by the amount of benefits already paid during that benefit year.

(2) Employees who are on disability on their anniversary date shall be entitled only to the benefits, as determined in paragraph (b), to which they were entitled on the day they ceased active full time work for the Employer by reason of disability. They must return to active full time work for the Employer and work two (2) full weeks in the new benefit year before becoming entitled to the new benefits.

(3) Working days lost for which supplemental UCD or Workers' Compensation benefits are paid and supplemental UCD or Workers' Compensation benefit payments made under this plan shall not be considered as time worked for any purposes in this Agreement.

(4) The benefits of this plan shall not apply to any employee for any disability not covered by State Unemployment Compensation Disability or Workers' Compensation Law.

(5) Satisfactory evidence of disability is a prerequisite to participation in the benefits provided by this plan. Qualification for UCD or Workers' Compensation benefits is not necessarily in and of itself considered satisfactory evidence of disability for purposes of this plan. Further, the Employer, at his discretion and at his expense, reserves the right to have his own physician examine an employee participating or seeking to participate. If such examination reveals that there is not satisfactory evidence of disability the benefits under this plan shall cease until the matter is resolved. If the matter is not resolved it may be referred to the grievance procedure outlined in this Agreement.

(6) In order to qualify for benefits the employee has the responsibility for taking all proper steps to insure early recovery. Such steps may include the attendance of a qualified physician and the purchase of drugs, medicines, medical supplies and hospitalization service as necessary

(7) Upon request of the Employer the employee shall furnish to the Employer the doctor's estimate of the date that the disability will terminate and the employee will resume his/her regular or customary work. This information is recorded in Question No. 24 of the current State UCD Claim Form and comparable Workers' Compensation Claim Form.

SECTION 24—DEATH IN FAMILY

Any employee covered by this Agreement who suffers a death in the family shall be granted three (3) consecutive work days off with full pay. One of the days shall be the day of the service. Employees shall receive such paid days off in addition to, and irrespective of, the employee's regular days off. However, if the service occurs on an employee's regular day off, the employee shall be granted the three (3) days bereavement leave closest to the day of the service. No payment shall be made for any part of such leave which falls within the employee's vacation period or other paid period when the employee is not covering his/her job. For the purposes of this section, "family" shall include spouse, parents or legal guardians, children, brother or sister, father-in-law and mother-in-law.

SECTION 25—JURY DUTY

Effective on the first of the financial week following the signing of this Agreement an employee with at least one (1) year of employment required to report for jury service on a day when he/she normally would have been scheduled to work any shift shall be paid for a maximum of thirty (30) days, except as provided for herein, of such jury service in a calendar year at his/her regular straight-time shifts' pay minus any pay received as such juryman. Such employee need not be filled by a substitute except at the option of the office. To be eligible for such payment, the employee must inform the foreman in writing of the call to jury service within twenty-four (24) hours of receipt of the official notification, and then must furnish to the foreman a statement of jury service from the Clerk of the Court.

Additional jury duty pay in excess of thirty (30) days shall be granted by the Employer where economic hardship and similar factors indicate additional jury duty pay is warranted.

SECTION 26—PRIOR AGREEMENTS

All prior agreements written or verbal between the Employer and the Union are hereby mutually cancelled and superseded by this Agreement, the Supplemental Agreements on Job Security and Work Arrangements and/or the agreements attached as Appendices to the Memorandum of Understanding appended to this Agreement.

SECTION 27—TERM OF CONTRACT

(a) Except as hereinbefore provided, this Agreement shall become effective January 1, 1980, and shall remain in effect to and including December 31, 1982, and may be continued thereafter from year to year by mutual agreement of the parties signatory hereto.

(b) Either party desiring to amend the terms of this Agreement upon its expiration date, shall give the other party sixty (60) days notice to this effect in writing on any date after November 1, 1982, such notice to be accompanied with a detailed statement of changes desired. The party upon whom the original demand is

made may present a counter proposal at any time within thirty (30) days after such notice has been received. If no counter proposal be filed, the existing agreement shall be considered to be the respondent party's counter proposal.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals this 28th day of August, 1980.

SAN FRANCISCO NEWSPAPER PRINTING COMPANY, INC.

By /s/ J. F. Kolder

NORTHWEST PUBLICATIONS, INC.

By /s/ John B. Hammett

SAN FRANCISCO WEB PRESSMAN AND PLATEMAKERS' UNION NO. 4

By /s/ Cyril W. Quinn

By /s/ Ed Arrison

By /s/ Robert B. Viale

/s/ Dave Ratto

/s/ Harold F. McGuire

This Agreement has been made with the consent and approval of the International Printing and Graphic Communications Union, which undertakes to guarantee the fulfillment of the conditions hereinbefore set forth, except that the International Printing and Graphic Communications Union assumes no liability hereunder for any work stoppages or breaches of this contract unless said International Printing and Graphic Communications Union actually authorizes, ratifies and actively participates in said work stoppages or breaches of this contract.

BY:_____

MEMORANDUM OF UNDERSTANDING

by and between

SAN FRANCISCO NEWSPAPER PRINTING CO., INC.

and

SAN FRANCISCO WEB PRESSMEN AND PLATEMAKERS' UNION NO. 4

The purpose of this Memorandum is to renew all remaining side agreements, understandings and/or letters previously entered into by the parties hereto which are not covered in writing in the basic Collective Bargaining Agreement of the Supplemental Agreements on Job Security and Work Arrangements. All existing side agreements, understandings, and/or letters now in effect are set forth in the present Collective Bargaining Agreement or the Supplemental Agreements on Job Security and Work Arrangements and/or are attached as Appendixes to the Memorandum of Understanding. It is understood that any and all such agreements, understandings, or letters previously entered into by the parties are in all things mutually cancelled and superseded by this Memorandum and/or the present Collective Bargaining Agreement of the Supplemental Agreements on Job Security and Work Arrangements. No alteration, amendment, enlargement or modification of the Appendices attached hereto or the Collective Bargaining Agreement shall be binding on either party unless same be made in writing and signed by each of the parties respectively. Any future alteration and/or amendment shall be in writing and when accepted by the parties hereto shall become a new Appendix attached to this Memorandum of Understanding.

The following Appendixes are being renewed from the date of signing this Memorandum to and including December 31, 1982:

INDEX

Subject	Appendix
Bidding for Maintenance Jobs	I
Firing and Barring Procedure Relative to Intoxication or Drinking on the Job	II
Check-outs	III
Foremen—Duty and Authority Interpretation—Section 11(a)	IV
Floormen—Mark-ups	V
Floormen—Overtime Bumping Procedure	V
Floormen—Compulsory Vacation Procedure	V
Foremen Immunization from Performance of Picketing Etc.	XVI
Hiring of Flypersons	VI
Holidays Falling During Vacations	VII
Holiday Provision Interpretation of Section 16	VIII
Leave of Absence Procedure	IX
Lobster Shift/Saturday Bulldog Run	X
Pension (Supplemental) Contributions—Non Attrition Journeymen	XVIII
Pressroom Mark-up Dispatcher	XI
Pre-Shift Overtime	XII
Saturday Lobster Shift vs. Holiday Pay Practices	X
Second Lunch Period	XVII
Stand-By Rules for Subs	XI
Stripping Color Plates	XIII
Stripping Color Plates vs Second Lunch Period Sub-Section 6(b)	XIII
Uniform Allowance	XIV
Vacation Period—Section 15(g) Extending Same Beyond Calendar Year	XV

APPENDIX I

RE: BIDDING FOR MAINTENANCE JOBS

Notwithstanding the fact that the subject covered below is defined in the current Collective Bargaining Agreement, attachments thereto and/or has been established by past practice, the Company proposes the continuation of the terms and conditions set forth below:

A. BIDDING FOR MAINTENANCE JOBS

(1) The Company will within five calendar days following the Union's acceptance of this Appendix post on the pressroom Bulletin Board a written memorandum for a period of one financial week notifying Journeyman employees that they may, if interested in performing pressroom maintenance work, indicate their preference for said work by signing the memorandum. This list of names will be known as the "List of Pressmen Preferring Maintenance Work".

(2) After said list of names has been furnished to the Foreman, he/she will select a Newspaper Printing Company pressroom maintenance crew on the following basis:

> (a) In selecting said crews the Foreman will give due consideration to priority, provided that priority will not be the sole factor considered. Among other objective factors the Foreman will judge are the general competency, special qualifications for the job and ability of the individual to do such maintenance work. All such factors will be given equal consideration. The Foreman shall be the sole judge of the factors under consideration. Disputes, if any, are to be referred to the Joint Standing Committee provided for in Section 21 of the contract.

(3) Replacements for the initial maintenance crew will be selected from the "List of Pressmen Preferring Maintenance Work" in accordance with the procedure outlined above. When said list of names has been exhausted, the Foreman may again post the memorandum provided for in Item (1) above.

(11/18/69)

Dated: 8/28/80

SAN FRANCISCO NEWSPAPER PRINTING COMPANY, INC.	SAN FRANCISCO WEB PRESSMEN AND PLATEMAKERS' UNION NO. 4
By /s/ J. F. Kolder	By /s/ Cyril W. Quinn

APPENDIX II

RE: FIRING AND BARRING PROCEDURE RELATIVE TO INTOXICATION OR DRINKING ON THE JOB

Pressroom employees who violate the following rules shall be disciplined or discharged in accordance with the procedure set forth in paragraphs (a), (b) and (c) below:

(i) Drinks or becomes intoxicated during office hours and because of such condition is incompetent to perform his/her work efficiently and safely.

(ii) Stores an intoxicating beverage which has been opened on the Employer's premises or brings in same for the purpose of consumption on premises.

(a) On the first such occasion an employee will be sent home without pay for that day and given a warning. The office will notify the Union in writing that the employee has been sent home and has been given his/her first warning.

(b) If a second offense occurs within a twelve (12) month period thereafter, such employee will be sent home without pay for that day and his/her name will be placed at the bottom of the priority list. The Union will be notified in writing of such action.

(c) If a third such offense occurs within a twelve (12) month period, such employee may be discharged at the option of the Employer and may be barred from further work in that office for a period of one (1) year. If the employee is discharged, the Union will be notified in writing.

(12/22/70)
DATED: 8/28/80

SAN FRANCISCO
NEWSPAPER
PRINTING COMPANY,
INC.

By /s/ J. F. Kolder

SAN FRANCISCO
WEB PRESSMEN AND
PLATEMAKERS' UNION
NO. 4

By /s/ Cyril W. Quinn

APPENDIX III

RE: CHECK-OUTS

This Appendix sets forth the agreement between the Union and the Company relative to the above captioned subject:

(1) If the Chairman on duty receives a call from a pressman who is attempting to check out, the Chairman must immediately notify the shift Foremen of same. Thereafter the Chairman will be required to put such information in writing.

(2) After receiving said information, the Shift Foreman will notify said Chairman if the individuals checking out must be replaced. If the pressman does not have to be replaced, the Foreman must immediately thereafter notify the Chairman of same.

(10/9/70)

DATED: 8/28/80

SAN FRANCISCO NEWSPAPER PRINTING COMPANY, INC.	SAN FRANCISCO WEB PRESSMEN AND PLATEMAKERS' UNION NO. 4
By /s/ J. F. Kolder	By /s/ Cyril W. Quinn

APPENDIX IV

RE: INTERPRETATION SECTION 11(a)
FOREMAN—DUTY & AUTHORITY

In accordance with the second sentence of Section 11(a), it is agreed that the foreman shall have full authority to carry out all the instructions of the Employer. The foreman's orders shall be in conformity with the "Agreement" and members of the Union shall comply with those orders.

(a) In the event there is a dispute between the foreman and the chapel chairman as to whether the foreman's orders are in conformity with the "Agreement" such disagreement shall be subject to the following procedure. The foreman shall immediately contact a representative of Management to determine whether his/her instructions agree with Management's interpretation of the contract. The chapel chairman shall likewise contact the chairman or a member or members of the Union's Executive Board to also determine whether the foreman's orders are in accordance with the Union's interpretation of the contract. In the event a difference still remains, the foreman's orders shall be carried out and within 24 hours thereafter, the differences shall be referred to the Executive Board of the Union and the Employer's representative (other than the foreman) and if mutual agreement be not reached within 72 hours thereafter, the issue shall be referred to the Joint Standing Committee as provided for in Section 21.

Pending a decision of the differences by the Joint Standing Committee, it is agreed that:

(1) The Union without prejudice to its rights will abide by the instructions of the Employer as carried out by the foreman, or

(2) The Employer without prejudice to its rights will instruct the foreman to abide by the "decision" of the Executive Board of the Union.

If a change in conditions is created under the procedures set forth in paragraphs (a) and (b) hereof, and added expense is created, the Joint Standing Committee in making its decision shall also

determine whether the Union or the Employer shall pay the increased costs that were so incurred.

(1/12/61)

DATED: 3/28/80

SAN FRANCISCO NEWSPAPER PRINTING COMPANY, INC.	SAN FRANCISCO WEB PRESSMEN AND PLATEMAKERS' UNION NO. 4
By /s/ J. F. Kolder	By /s/ Cyril W. Quinn

APPENDIX V

RE: (1) FLOORMEN—MARKUPS

(2) FLOORMEN—OVERTIME BUMPING PROCEDURE

(3) FLOORMEN—COMPULSORY VACATION PERIOD

(1) FLOORMEN—MARKUPS

The following will set forth the understanding pertaining to guaranteed markups for Floormen in the pressroom.

(a) The Employer guarantees that all employees who are presently classified as "floormen" on the mark-up as of January 1, 1977 will for the remainder of their working lives, unless sooner terminated for the reasons set forth in the Attrition Agreement, Section II, or if reclassified, shall receive not less than either $12.50 of the day or $13.70 of the night/lobster shift rates, as appropriate, more than the straight time weekly journeyman rates in effect during the life of this Agreement.

(b) The Foreman will furnish the Markup Committee with the starting times and off days for the Floormen situations and stipulate whether same are night and/or day situations.

(c) The Foreman has the prerogative of changing off days and/or starting times within the day or night assignments with one financial week's notice.

(d) The Foreman may, on a temporary basis, change a Floorman from days to nights or nights to days with one financial week's notice for a minimum of one financial week for production problems only and not for collect runs or extra presses.

(e) If a permanent change is made in the division of Floormen employed between day and night or night and day, the Employer will give the Union 30 days notice of such change and said change will become effective following said notification.

(2) FLOORMEN—OVERTIME BUMPING PROCEDURE

This Appendix also sets forth the regulations and procedures covering Floormen—Overtime Bumping which are as follows:

(a) The Foreman or the Assistant-in-charge *must* be notified in advance by the Chairman of the fact that a regular floorman will be "bumped".

(b) The replacement *must* be competent to perform duties of floormen or there must be other pressmen scheduled to work that shift who are competent to perform floormen duties before the regular floormen can be bumped.

(c) Only one regular floorman per day or night shift may be bumped.

(d) If possible, the regular floorman will have a choice of the day he will be bumped.

(3) FLOORMEN—COMPULSORY VACATION PROCEDURE

(a) The Foreman or the Assistant-in-charge *must* be notified in advance by the Chairman of the fact that a regular floorman will be required to take one week of vacation for the purpose of participating in the Union's program to make work available for substitute pressmen during slack work periods.

(b) The replacement *must* be competent to perform the duties of floormen or there must be other pressmen scheduled to work during said week of vacation who are competent to perform floormen duties before the regular floormen can be required to take said vacation.

(c) Only one regular floorman per day or night work week may be required to take the compulsory vacation.

(d) If possible, the regular floormen will have a choice of the week they are required to take the compulsory vacation. The Foreman will schedule each flooman's week of compulsory vacation.

(1—7/16/73)

(2—1/15/70)

(3—8/4/75)

DATED: 8/28/80

SAN FRANCISCO NEWSPAPER PRINTING COMPANY, INC.	SAN FRANCISCO WEB PRESSMEN AND PLATEMAKERS' UNION NO. 4
By /s/ J. F. Kolder	By /s/ Cyril W. Quinn

APPENDIX VI

RE: HIRING OF FLYPERSONS

The purpose of this Appendix is to reduce to writing and to clarify the employment procedures and hiring practices followed by the Newspaper Agency in its Pressroom when hiring Flypersons. The following sets forth said procedures and practices.

(1) All Flypersons applicants applying at or referred to the Newspaper Agency's Personnel Department will be permitted to execute a "Statement of Qualifications" form. All such applications for employment will be considered in accordance with the needs of the Company on the basis of the date said application was executed. If no openings exist, the application will be maintained on file in the Personnel Department in accordance with the applicable laws pertaining to the retention of employee applications.

(2) Any individual who inquires at the Web Pressmen's Union No. 4 office or at the Company's Pressroom about such employment possibilities with the Newspaper Agency should immediately be referred to the Company's Personnel Department.

(3) Upon request the Company's Personnel Department will furnish the Pressroom Foreman with the names of applicants on file, in accordance with Item No. 1 above.

(4) The Pressroom Foreman shall hire the applicants, if qualified for said jobs, on the basis of the earliest date application was made with the Personnel Department.

(5) Under no circumstances should any reference be made to such applicants that Web Pressmen's Union No. 4 does the hiring for the Company nor that the Company hires exclusively through the Union.

(6) Under no circumstances should an applicant for employment ever be referred directly to the Union office.

(2/3/72)
(7/1/80)

DATED: 8/28/80

SAN FRANCISCO NEWSPAPER PRINTING COMPANY, INC.	SAN FRANCISCO WEB PRESSMEN AND PLATEMAKERS' UNION NO. 4
By /s/ J. F. Kolder	By /s/ Cyril W. Quinn

APPENDIX VII

RE: HOLIDAYS FALLING DURING VACATIONS

This Appendix sets forth a procedure covering pressmen who switch vacation periods and do not return their vacation checks.

(1) The Company and Union agree that if any pressman accepts his vacation pay and thereafter decides not to take his regularly posted vacation time off until later in that calendar year he/she shall *either:*

(a) Return his/her vacation check; or

(b) Keep same and take the time off later in the calendar year without additional vacation pay.

(c) If a pressman elects to keep his/her vacation pay, this cash payment liquidates the proportionate vacation credits in the current vacation year, and such employee will not qualify for any other contract benefit that would normally be granted under a paid vacation, i.e., an additional day of pay if a holiday falls within the vacation period (Section 15(k) of the contract).

(d) If the employee elects to return his/her vacation pay, he/she shall be eligible to receive all contract benefits including the holiday pay mentioned above at the time he/she takes his/her rescheduled vacation time off.

(2) The Employer will make Retirement Benefit Plan and Welfare Trust Fund contributions, for vacation periods at the time the individual receives his/her vacation check. If a pressman receives his/her vacation check and thereafter reschedules his/her vacation period, the Company's Payroll Department will make the appropriate adjustments in its Retirement and Welfare records to reflect same and thereafter make such contributions when the vacation check is reissued.

(6/23/69)

DATED: 8/28/80

SAN FRANCISCO NEWSPAPER PRINTING COMPANY, INC.	SAN FRANCISCO WEB PRESSMEN AND PLATEMAKERS' UNION NO. 4
By /s/ J. F. Kolder	By /s/ Cyril W. Quinn

APPENDIX VIII

RE: INTERPRETATION OF HOLIDAY PROVISION—Section 16

(1) *Unworked Holidays—Pay Practices*

(a) When the guaranteed markup exceeds the operating requirements on any holiday observed in Section 16, pressroom employees whose services are not required by the Employer for production purposes on said holiday will be excused by the Employer and paid a straight time shift's pay for such regularly scheduled shift.

(b) The Foreman has the exclusive right to determine the number of pressroom employees to be worked on any recognized holiday.

(c) The Foreman, in accordance with the past practice, will by 12 o'clock noon of the day preceding a holiday, notify the Chairman of the manpower requirements of the Employer.

The procedure for excusing pressroom employees who are in excess of the holiday operating needs of the Employer will be determined in accordance with the rules and regulations of the Chapel, provided, same are acceptable to the Foreman. Pressroom employees excused from working a holiday are not subject to the standby requirements for "call" to work.

Pressroom employees required to work on any holiday shall be selected with consideration being given to furnishing at all times a sufficient number of competent pressroom employees as may be required by the Employer for the proper operation of its pressroom.

(d) Pressroom employees who are scheduled to work on a holiday and fail to report for work, "check out", are excused at their own request, or who do not work the holiday for any other reason, shall not receive any pay whatsoever for the holiday. If a substitute is called in as a replacement to fill the operating requirements for such pressroom employee, the sub shall be paid for working the holiday in accordance with sub-Section 16(b).

After being excused from working a holiday, in accordance with the procedure referred to in (c) above, pressroom employees who are later called back to work the holiday in order to fill operating requirements, shall be paid in accordance with sub-Section 16 (b) and (e).

If a pressroom employee is required to work a non-scheduled shift on a holiday in order to fill the operating requirements, he/she shall be paid in accordance with sub-Section (b) and (e).

(2) *Retirement and Welfare Contributions*

The Employer shall contribute on behalf of those pressroom employees who are excused from working the holiday in accordance with paragraph (c) above, the per shift payments provided for in Section 19 (Retirement Plan) and in Section 20 (Welfare Trust Fund).

(3) The Agreements set forth above in paragraphs (1) and (2) shall supersede the application of any previous policy, practice or understanding applying to unworked holidays observed.

(5/13/71)

DATED: 8/28/80

SAN FRANCISCO NEWSPAPER PRINTING COMPANY, INC.	SAN FRANCISCO WEB PRESSMEN AND PLATEMAKERS' UNION NO. 4
By /s/ J. F. Kolder	By /s/ Cyril W. Quinn

APPENDIX IX

RE: LEAVE OF ABSENCE PROCEDURE

This Appendix sets forth the understanding between the Union and the Company regarding the procedure pressroom employees must follow in requesting a leave of absence. The procedure is as follows:

(1) A pressroom employee requesting a leave of absence must do so in writing to the Foreman.

(2) Upon receipt of the request, the Foreman will approve or disapprove said request in writing to the individual with a copy to the Union.

(4/14/71)

DATED: 8/28/80

SAN FRANCISCO NEWSPAPER PRINTING COMPANY, INC.	SAN FRANCISCO WEB PRESSMEN AND PLATEMAKERS' UNION NO. 4
By /s/ J. F. Kolder	By /s/ Cyril W. Quinn

APPENDIX X

RE: (1) LOBSTER SHIFT/SATURDAY BULLDOG RUN
(2) INTERPRETATION OF SATURDAY LOBSTER SHIFT vs. HOLIDAY PAY PRACTICES

(1) Lobster Shift Saturday Bulldog Run

Lobster shift—For the Saturday bulldog run for the Sunday paper—as previously agreed.

This Appendix also sets forth below the administrative interpretation pertaining to the payment a pressman receives for working the Saturday bulldog run, when a holiday falls on Saturday:

(2) Saturday Lobster Shift v. Holiday Pay Practices

The understanding in (1) above provides in part that pressmen scheduled to work the bulldog run will commence work at 3:00 a.m. Saturday morning and work a six (6) hour shift exclusive of thirty (30) minutes for lunch. Said pressmen work the Saturday bulldog run as a part of their regular weekly markup.

The questions raised were what pay does a pressman receive for working the Saturday bulldog run when a holiday falls on Saturday, and what interpretation did the parties place on Section 16(b) (Holidays) which states in part as follows:

> "A holiday within the meaning of this section shall begin at 5 a.m. of the day of observance and continue until 5 a.m. of the next day . . ."

In negotiating the Saturday Lobster Shift Agreement, the parties agreed, notwithstanding any other provision of the contract, that those pressmen employees who are regularly scheduled as a part of their markup to work the lobster shift for the Saturday bulldog run for the Sunday paper would be paid the holiday premium rate for such hours worked when one of the holidays observed under the contract falls on a Saturday. It was understood that no employee would receive holiday pay for more than one such holiday observed from any one Employer. Furthermore, all

other applicable terms and conditions of Section 16 (Holidays) would apply to such Lobster Shift in the future.

The terms of this administrative interpretation Agreement will apply to all future holidays falling on a Saturday that are observed by Company pressroom employees scheduled to work the Saturday Lobster Shift.

(1-12/22/70)

(2-4/11/69)

DATED: 8/28/80

SAN FRANCISCO NEWSPAPER PRINTING COMPANY, INC.	SAN FRANCISCO WEB PRESSMEN AND PLATEMAKERS' UNION NO. 4
By /s/ J. F. Kolder	By /s/ Cyril W. Quinn

APPENDIX XI

RE: (1) PRESSROOM MARK-UP DISPATCHER AND (2) STAND-BY RULES FOR SUBS

This Appendix sets forth the agreement between the Union and the Newspaper Printing Agency relative to the above captioned subject matter:

(1) Name of Position

The Union and Employer agree to change the title of "Mark-Up Chairman" to "Mark-Up Dispatcher".

(2) Selection of the Mark-Up Dispatcher

The Union and Employer will have an equal responsibility in the selection of the Mark-Up Dispatcher. The Union shall be required to notify the Foreman in writing of the names of the candidates for the position of Mark-Up Dispatcher. The Employer, within five days after receiving said notification, shall advise the Union of any objection it has to the candidates for the position. Any disputes regarding the selection would be referred to the grievance procedure under Section 21 of the contract.

(3) Maximum Work Weeks

The Mark-Up Dispatchers maximum work week shall be five straight time shifts per financial week. The five day work week shall be scheduled Monday through Friday with shifts to commence at 10:00 a.m. and ending at 5:30 p.m. No overtime shall be worked except upon approval of the Foreman. The scheduled work days and/or shift starting times may be changed subject to the approval of the Foreman.

(4) Wages—Rate of Pay

The Mark-Up Dispatcher shall be paid the wage scale set forth in Section 2 of the contract for journeymen working the day shift.

(5) Payment of Weekly Salary

The Mark-Up Dispatcher's journeyman wages shall be paid out by the Employer.

(6) Retirement and Welfare Contributions

The Employer shall contribute on behalf of the Mark-Up Dispatcher the per shift payments provided in Section 19 (Retirement Plan) and in Section 20 (Welfare Trust Fund).

(7) Telephone Expense

The Mark-Up Dispatcher's telephone expenses shall be divided equally between the Union and the Employer. The Employer upon receipt of the monthly bill from the Pacific Telephone Company shall furnish the Union with a copy of same and bill the Union each month for its share of same.

The Union and the Employer also agreed there would be *no collect calls* accepted by the Mark-Up Dispatcher, except in the case of an emergency. In such cases the Mark-Up Dispatcher shall be required to get the name of the individual making the call, note the time and date, and thereafter the pressman who made or accepted the call shall be billed for same plus taxes.

(8) Stand-by Rules for Subs—Not on the Attrition List

The stand-by procedures to be followed by subs whose names are not on the Attrition List in the Newspaper Agency's pressroom is set forth below:

(a) All subs whose names are not on the Attrition List who maintain their priority in the Agency's pressroom shall be required to call the Mark-Up Dispatcher between the hours of 3:00 P.M. and 4:00 P.M. to determine if they are scheduled to work that night or the next morning.

(b) It shall be the duty of the Mark-Up Dispatcher to inform the first five non-Attrition subs of the "up list" each day that they are to be "on call" from 6:30 P.M. until 9:00 P.M. If such subs on the "on call" portion of the "up list" cannot be contacted between those hours, they shall be charged with a refusal.

(c) On Sunday the quota of non-Attrition subs on a stand-by basis shall be increased to 10.

(6/ /80)

DATED: 8/28/80

SAN FRANCISCO NEWSPAPER PRINTING COMPANY, INC.	SAN FRANCISCO WEB PRESSMEN AND PLATEMAKERS' UNION NO. 4
By /s/ J. F. Kolder	By /s/ Cyril W. Quinn

APPENDIX XII

RE: PRE-SHIFT OVERTIME

When the following language was added to Section 9(a):

> "No employee's starting time shall be changed more than one and one-half (1-1/2) hours."

The Union and the Employer in that negotiation further agreed that if such starting time was changed more than one and one-half (1-1/2) hours, the parties would revert back to the Union's interpretation of said section as set forth below.

The interpretation the parties placed on the last sentence of Section 9(a) as quoted above is that whenever such a change is made in an employee's starting time, said change would be utilized on an intermittent basis, and in most cases be limited to one such shift per financial week but not to exceed a maximum duration of one financial week (seven consecutive working days or nights). If the Employer plans on utilizing pre-shift overtime for more than two (2) consecutive working days in the same financial week, the Employer shall notify the Union of same, and if requested, meet with the Union for the purpose of discussing the Employer's reason(s) for such utilization.

The Union's interpretation as referred above is as follows:

> If an employee's regular starting time is at 10:00 a.m. and the employee called in to work at 7:30 a.m. the employee is paid two and one-half (2-1/2) hours overtime. The shift starting time is then set at 7:30 a.m. rather then 10:00 a.m. and all time worked after 3:00 p.m. is paid at the overtime rate. Make-ready on color is exempt from said penalty requirement.

(12/22/70)

DATED: 8/28/80

SAN FRANCISCO NEWSPAPER PRINTING COMPANY, INC.	SAN FRANCISCO WEB PRESSMEN AND PLATEMAKERS' UNION NO. 4
By /s/ J. F. Kolder	By /s/ Cyril W. Quinn

APPENDIX XIII

RE: (1) STRIPPING COLOR PLATES
(2) STRIPPING COLOR PLATES vs. SECOND LUNCH PERIOD—Sub-Section 6 (b)

(1) STRIPPING COLOR PLATES

All color humps will be stripped and portable fountains removed.

(2) STRIPPING COLOR PLATES vs. SECOND LUNCH PERIOD LANGUAGE Sub-Section 6 (b)

This Appendix also sets forth below the administrative interpretation pertaining to the Stripping of Color Plates Agreement whenever the Second Lunch Period in Section 6(b) of the contract becomes applicable.

Sub-Section 6(b) contains a proviso which prohibits pressmen from working, following the first lunch period, more than 5 continuous hours without a second lunch period, unless the run can be *completed* in thirty minutes thereafter. In this event the contract sets forth certain conditions under which the run may be completed.

The Special Standing Committee, in discussing the conflict between the second lunch period language of Sub-Section 6(b) and the above stripping of Color Plates understanding, agreed that whenever it becomes necessary to work the 15 or 30 minute period to complete a run as specified under sub-Section 6(b) that therafter the office will be permitted an additional 10 minutes to strip the color humps and remove the portable fountains. For said 10 minutes work, pressmen shall be paid for 15 minutes at the overtime rate. Said extra time cannot be utilized to continue the run but only to do the work required under the Stripping Color Plates Agreement.

(1—12/22/70)
(2— 4/11/69)
(3—11/18/69)

DATED: 8/28/80

SAN FRANCISCO NEWSPAPER PRINTING COMPANY, INC.	SAN FRANCISCO WEB PRESSMEN AND PLATEMAKERS' UNION NO. 4
By /s/ J. F. Kolder	By /s/ Cyril W. Quinn

APPENDIX XIV

RE: UNIFORM ALLOWANCE

The Company shall provide and maintain during the life of the new Agreement a minimum of up to five (5) sets of uniforms per week for all pressroom employees who maintain their priority in the Company's pressroom.

The cost of the above shall be shared equally, fifty (50%) percent per week to be paid by the Company and fifty percent per week shall be paid per week by the employee as a payroll deduction.

All pressroom employees who want to participate in this program will be required to sign a "Payroll Deduction Authorization" form authorizing the Company to make said deduction.

DATED: 8/28/80

SAN FRANCISCO NEWSPAPER PRINTING COMPANY, INC.	SAN FRANCISCO WEB PRESSMEN AND PLATEMAKERS' UNION NO. 4
By /s/ J. F. Kolder	By /s/ Cyril W. Quinn

APPENDIX XV

RE: VACATION PERIOD—Section 15(g) Extending Same Beyond Calendar Year

VACATION PERIOD—Section 15(g)

It is the policy of the Company to permit the last week of a vacation period to commence in the current calendar year and end in a new calendar year if the majority (four or more days) of the financial week falls within the current calendar year. If less than four days of a financial week fall within the current calendar year, a vacation cannot be carried over into the new calendar year.

(1—12/22/70)

(2— 4/24/72)

DATED: 8/28/80

SAN FRANCISCO NEWSPAPER PRINTING COMPANY, INC.	SAN FRANCISCO WEB PRESSMEN AND PLATEMAKERS' UNION NO. 4
By /s/ J. F. Kolder	By /s/ Cyril W. Quinn

APPENDIX XVI

RE: FOREMAN—IMMUNIZATION FROM PERFORMANCE OF PICKETING OR OF OTHER STRIKE-RELATED DUTIES

It is understood between the parties that the activity referred to in Section 11(f) of the Collective Bargaining Agreement shall include immunization from performance of any picketing or any other strike-related duties in connection with a strike/lockout against any other Employer and from any picketing against his/her own Employer.

It is further understood that the Union reserves the right to enforce any other of its laws except as limited by the above.

(5/20/80)

DATE: 8/28/80

SAN FRANCISCO NEWSPAPER PRINTING COMPANY, INC.	SAN FRANCISCO WEB PRESSMEN AND PLATEMAKERS' UNION NO. 4
By /s/ J. F. Kolder	By /s/ Cyril W. Quinn
	By

APPENDIX XVII

RE: SECOND LUNCH PERIOD—SECTION 6(b)

Ninety (90) days after the Newspaper Agency's Satellite Pressroom has been in operation, either party may give written notice to the other of its desire to meet for the purpose of reviewing the application and/or effect of the new second lunch period provision in sub-Section 6(b) of the Collective Bargaining Agreement on the Agency's Pressroom operation and/or the Pressroom employees.

Any disputes arising out of said meetings shall upon motion of either party be immediately referred for settlement to the Joint Standing Committee and/or Arbitration Procedures in Section 21 of the Collective Bargaining Agreement.

(7-18-80)

DATE: 8/28/80

SAN FRANCISCO
NEWSPAPER
PRINTING COMPANY,
INC.

By /s/ J. F. Kolder

SAN FRANCISCO
WEB PRESSMEN AND
PLATEMAKERS' UNION
NO. 4

By /s/ Cyril W. Quinn

By

Appendix XVIII

RE: SUPPLEMENTAL PENSION CONTRIBUTIONS—NON ATTRITION JOURNEYMEN

In addition to the Employer contribution to the I. P. & G. C. U.—Employer Retirement Fund, as provided for in Section 19 of the Collective Bargaining Agreement, effective on the first day of the new financial week following the signing of this Appendix, for each staight-time shift worked by the non attrition jouneymen named below, a supplementary sum of fifty cents (50¢) per straight-time shift actually worked by each such non attrition journeymen, shall be paid by the Employer to said I. P. & G. C. U.—Employer Retirement Fund.

No additional names of non attrition journeymen and/or other Pressroom employee shall be added to the list of names set forth below. The names of the non attrition journeymen covered by this Appendix are as follows.

Arrison, Edward C.
Barkhurst, Stanley
Berg, Renell P.
Brooks, W. E.
Caldwell, James D.
Casey, Donald A.
Cornwell, Donald D.
Davis, Gary W.
De Grammont, Raymond
Evans, Ronnie Dale
Giles, Michael
Giusto, Frank Lee
Green, Dudley R.
Harmon, Earl H.
Henry, George B.
Hourigan, John D.
Keast, Roy A.
Kelly, Joseph
Lewis, Robert S.
McCarthy, William B.
McHale, Patrick J.
Machell, Donald
Morarity, Robert
Nasarow, Victor
Norton, Robert A.
Palmer, James L.
Parks, Charles W. Jr.
Sanders, Ronald J.
Stevens, James L.
Talbott, Gene
Ward, Wallace P.
Wiley, Curtis W.
Yost, J.C.

DATE: 8/28/80

SAN FRANCISCO NEWSPAPER PRINTING COMPANY, INC.

By /s/ J. F. Kolder

SAN FRANCISCO WEB PRESSMEN AND PLATEMAKERS' UNION NO. 4

By /s/ Cyril W. Quinn

Appendix G

In The United States District Court
Northern District Of California

Before: The Honorable Eugene F. Lynch, Judge

C-83-4648 EFL

San Francisco, Ca.
January 27, 1984

San Francisco Newspaper
Printing Company, Inc.,
DBA San Francisco
Newspaper Agency,
Plaintiff,

vs.

San Francisco Web Pressmen's
Union No. 4,
Defendant.

San Francisco Web Pressmen's
Union No. 4,
Counterclaimant,

vs.

San Francisco Newspaper
Printing Company, Inc.,
DBA San Francisco
Newspaper Agency,
Counterdefendant.

Motion To Vacate Arbitration Award

Friday, January 27, 1984

The Court: San Francisco Newspaper Printing Company versus S.F. Web Pressmen's Union.

The Clerk: Civil Case 83-4648.

Mr. Walsh: Brian Walsh appearing for the San Francisco Web Pressman's Union.

Mr. McTernan: Francis J. McTernan. How are you this morning?

Mr. Ford: Robert Ford for the San Francisco Newspaper Agency.

Mr. Dritsas: William Dritsas for the Agency.

The Court: Well, is there any way to settle this case? It strikes me that the arbitrator is once again consistently inconsistent.

Mr. Walsh: May I address that, Your Honor?

The Court: Yes. That's why I asked, is there any way to settle it besides—

Mr. Walsh: Well, there is, I think. Number one—

The Court: I mean not legally. Settle it voluntarily. The arbitrator once again has said that you can fire people permanently, and that's proper, but once again the arbitrator says that you—that if you don't rehire them, you can have another hearing on whether that rehiring was arbitrary and capricious, and I don't understand how that can be consistent with—with the ability to fire permanently.

Mr. Walsh: Well, your honor, the difficulty is that, first, the arbitrator had before him a long record of the history of the referral clause in the industry, which I think is—the background is important in understanding what, on its face, may appear to be a contradiction. I'd like to address that, but first I'd like to address what apparently becomes the misleading concept in this case, this—this term "discharge and permanent bar."

The Court: Just permanent discharge is all you're talking about.

Mr. Walsh: Well, the word "permanent." The arbitrator found, Your Honor, and indeed it was urged by the company, that a discharge and permanent bar is nothing more than a conventional discharge in any other industry. So the term "discharge and permanent bar" is merely—it's really a redundancy. It's a discharge and discharge. So the question in this case is, what does a discharge mean? We all have a fairly good understanding of what it means in a disciplinary context. We have to understand, this is not a discharge case. This was a refusal to hire case.

Then the question is, the arbitrator, and he is the one selected by the parties to give the—the ongoing interpretation of that contract, to give life to it, and he says, "All right, we have two clauses here, and you can't ignore one, to the exclusion of the other, I have to give them both meaning and import."

And so he does that by accepting the Agency's posture that it's a conventional discharge.

If we read this Court, the Court's problems with this case—and I—we basically concede in our pleadings the first award didn't make clear what the arbitrator was thinking. We think the clarification does. The Court in its decision, on page 4, got to the heart of what was the problem with this case, and The Court—

The Court: Yes.

Mr. Walsh: If we take a look at that, Your Honor, and add to it—

The Court: Well—

Mr. Walsh:—absorb this idea of a permanent bar is not something more than a discharge—that's what the company keeps arguing, "We discharged him and we permanently barred him."

The Court: I agree with you if the arbitrator said, under the contract, the defendant can never permanently bar or permanently discharge any employee, and that any employee who is disciplined by discharge has to be given a chance for rehiring and has to be looked upon at that time. I agree with what you're saying. That's not what the arbitrator says.

Mr. Walsh: He says—well, another confusion comes up, Your Honor. In the Supplemental Agreement (sic) we talked about less than permanent bars and again the idea of bar with reinstatement. And we're talking—the arbitrator sometimes uses the term "Rehire" as a synonym for the term "Reinstatement." We're talking about—there he's talking about rehire or reinstatement to the former position. And we concede that fact, Your Honor. When a man has been discharged, you cannot rehire him, he has no right to rehire to that former position.

(Pause in proceedings.)

The Court: Go ahead.

Mr. Walsh: But he does not lose all of his rights as a pressman, the rights to be sent out sometime down the road, after an appropriate period of rehabilitation, under the referral clause, be sent out as a new hire to start all over again. And there all the arbitrator is saying is you can't ignore him completely, you've got to at least in good faith take a look at his qualifications and weigh a prior discharge, which is just one part of determining his competency. That's all the arbitrator is asking, don't be arbitrary and capricious about it.

The Court: Okay.

Mr. Walsh: If we—again, looking at the Court's decision, page 4—

The Court: Can't find it. Do you know where my decision is?

Mr. Walsh: Your Honor, may I provide a copy?

The Court: Would you give me a copy? I was looking at it yesterday. I can't seem to find it right now.

In any event, that's the problem, you see, is him saying you can permanently fire someone. If he says you can't, then I agree, his opinion may well be consistent.

Mr. Walsh: And, Your Honor—what we are saying is that he did not say that you can permanently fire someone. He says you can discharge him in the conventional sense. He's out. But it doesn't mean that you can add as a further penalty he loses his referral rights, and that's what the Company's arguing. They're

saying, "Yeah, we get to discharge him in a conventional sense, and we get to add, as a further discipline, this refusal of his rights under the referral system." And the arbitrator said, no, that's not what it means. Indeed, that's not what the Company argued in the first—in the arbitration.

Mr. Ford: May I be heard, Your Honor?

The Court: Sure. Let him finish.

Mr. Walsh: May I—Your Honor, turning to, then, the Court's decision, if we absorb this idea that a permanent bar is a conventional discharge—and that's what the arbitrator found, not that it's a permanent discharge, it's a conventional discharge—then the problems that the Court had with the first arbitration go away, because the arbitrator's now clarified what he means.

If I read the Court's decision and clear up the redundancies, and insert the term "discharge" as we all know it, for the term "permanent bar," suddenly the problems are clear. It would read, "The arbitrator's award is inconsistent. He first found the agency had a right at the time of discharge to permanently bar an individual." It's—if we substitute the term "discharge" for "permanent bar," it would read, "He first found the agency had the right at the time of discharge to discharge an individual, and then he found that the agency's subsequent refusal to hire a discharged individual is subject to the grievance procedure and may be held arbitrary and capricious. It is incomprehensible to This Court how the arbitrator could determine the agency has a right to discharge an individual and at the same time determine that the right might be vitiated any time a discharged individual is subsequently referred to for rehire."

If we—if, as the arbitrator instructs us, we insert the term "discharge," his thinking and the court's thinking then become one, because you can, of course, reconsider a discharged individual for rehire. It's only when you give this added meaning to permanent—

The Court: The arbitrator is saying you have to reconsider a discharged employee.

Mr. Walsh: You've got to take a look at him. You've got to take a look at him.

The Court: The arbitrator's decision essentially states that when you fire an employee, for whatever cause, that each time he comes back and asks to be rehired, you have to take a whole independent look at him then, but you cannot say then, "Look, we fired you a month ago, or three weeks ago, we no longer want you back ever." And he says you can't do that. Then you've got to look each month or three months or year or six months as to—you just can't use that—that reasoning any more, you have to look for other reasons essentially is what he's saying.

Mr. Walsh: Well, although, Your Honor, reminding the Court that this was three years later; the man had an exemplary record in those three years.

The Court: Yeah, but assuming that the man is—everything is perfect, the arbitrator would be clearly consistent in his opinion if he said, "Under the contract, the Union never has a right to permanently discharge everyone. They can use discharge only in the sense of—of a—of a suspension, or a penalty, because every time they discharge that person, they have to relook at the person three months later, or whatever period of time."

Mr. Walsh: But unlike a suspension, we would relook at him as a new hire. In a suspension situation, you're restored to your former job, you just had some time off.

The Court: I understand. You can never permanently fire him, you can never say, "You're gone."

Mr. Walsh: "You're gone."

The Court: "You're gone and we don't want you back, and we're not going to take you back"—

Mr. Walsh: It's the latter thing that you can't ever say, "We don't want to take you back because we have a referral clause," which has been the life's blood of this industry. This is a craft union, your honor. These people are trained in their craft, they serve a long period of time—

The Court: That's why I asked you, can you settle it, really, when you came up here.

Let me hear from the other side for a second.

Mr. Ford: Your Honor, I will be very brief, because many of the arguments that I'm going to make have been brought up in your colloquy.

I would note number one that the clarification didn't clarify anything, it simply repeated the first arbitration. And I'll bring out number two, that the arbitrator found that the agency did have the right to discharge. Permanently. He said "discharge and permanent bar," and he equated that with a conventional discharge in other industries. And it is absolutely clear in other industries that what a conventional discharge means is that if an employer has the right and can show validly that it has discharged someone, which we assume here, it's already assumed in this case, that it has the right to sever once and for all the employment relationship with that person. In the future. It has no obligation to take that person back under any circumstances, as a new hire or as one with some or all the previous benefits.

To the extent that the Employer, in this case the San Francisco Newspaper Agency, is required to take a permanently discharged employee back, it's contractual right, the arbitrator recognized, to discharge is destroyed. And that is a totally implausible interpretation of the contract.

The Court: I'm inclined to agree, frankly.

Mr. Walsh: Well, then I—I don't want to argue with The Court, obviously, but—

The Court: It bothers me to be back here all the time with this case, and I assume you'll be coming back again, and that's why I asked, is there any way to work this out? I appreciate the problems he has in the industry of getting work, but by the same token, I don't see how the arbitrator can say, "You can permanently fire him," and then say, "But you really can't, you—you have to take a new look at him each time, and how much of a new look you take at him each time is going to be subject to another hearing, as to whether— and you can no longer use the old excuse

that, 'Look, we fired you a year ago, or six years ago, and we fired you, we meant it,' " You know. But I appreciate the problem.

Mr. Walsh: Our position is, of course, we've got this referral clause, and if you take the Company's position, we suddenly don't have a referral clause.

The Court: I don't think—

Mr. Walsh: Because then they can ignore out of hand anybody who's been discharged—you have to understand, Your Honor—

The Court: Listen, I agree with you.

Mr. Walsh: Yes.

The Court: If the arbitrator says the clause in the Company's contract means nothing more than—is doesn't mean any type of permanent discharge. It merely means that when you discharge a party, that after a reasonable period of time, or whatever else language he wants to use, you have to give that party a right to come back to work, if he qualifies at that time, in your opinion, and then that decision as to whether you allow him back or not would be subject to another hearing, if he says that, he'll agree it's consistent. It's—right now he's just totally inconsistent.

Mr. Walsh: Maybe I didn't—Your Honor, I thought he was saying what you just said.

The Court: No, the arbitrator is saying you can permanently discharge someone, you can fire them, that you never have to take them back.

Mr. Walsh: Okay.

The Court: That you can fire them conventionally, you can say, "Good-bye, we fire you." What you're trying to say is that the arbitrator—that the—that the contract doesn't have that clause in it. When the arbitrator says, "You can fire someone and permanently fire them" and he uses those words, and then says, "But, however, when he reapplies for work, you have to reconsider him, and—and you can't use the—that excuse," I think it's a totally inconsistent opinion.

Mr. Walsh: Your Honor, if I may, two—two things. First of all, remind the Court the arbitrator did not say that there's a permanent bar, he said it was a discharge. And not that you ignore his disciplinary record. That's part of determining his competence.

Indeed, the arbitrator in this case makes reference to the Harvey Letter decision, when Mr. Tenorio was sent out right after his discharge, he was sent out to the San Jose Mercury, same contract, et cetera. In that decision, Mr. Letter, which the Company urged, showed the flip side of this. The incidents were too fresh in this case. And in that case, Arbitrator Letter said, even though there is a referral clause, He's just been fired by this other company, he's incompetent—

The Court: That's another arbitration.

Mr. Walsh: Well, it was referred to in the award, Your Honor. It's in Mr. Le Prohn's award. And it shows—

Mr. Ford: It's also another company, Your Honor.

Mr. Walsh: Well, in the award, it indicates that this Company, the Agency, argued to the arbitrator that the arbitrator should follow the letter award, because indeed those two companies bargained together, have the same referral clause and disciplinary clause, and it's all the same area industry. And in the letter award, it shows that, unlike what the company claims, "Jeez, if you accept Le Prohn's idea, we've got to take this guy right back," Letter says quite clearly no. Two months after this—

The Court: —for a whole new opinion, though. What I say really is the arbitrator's opinion is totally inconsistent in his—in his approach, and accordingly, I—I plan to grant the Plaintiff's motion to vacate the award and remand the matter back for arbitration.

Mr. Walsh: Well, could—Your Honor, I—maybe it's on the record, but I—could the court indicate what—you said earlier what you thought was a consistent—the arbitrator could do this and such.

The Court: I suggest you get a copy of the transcript.

Mr. Walsh: Okay. We can do it that way.

The Court: But it seems to me when the Arbitrator says you can get rid of someone permanently, that—

Mr. Ford: Your—

The Court: Yeah.

Mr. Ford: Your honor, may I be heard on that?

The Court: Sure.

Mr. Ford: It's obvious from the Arbitrator's clarification that he has twice now indicated how he's intepreting the contract.

The Court: Right.

Mr. Ford: And for whatever reasons does not agree that he's been internally inconsistent. The Company would propose that—we agree that the award should be vacated, but we do not feel it should be remanded to the same Arbitrator. You have the authority to vacate the award, which would put the parties back in square one, at which point we could choose a new Arbitrator and litigate it before someone who hopefully—

The Court: He may agree. How about choosing a new Arbitrator? I'll just vacate the award, period.

Mr. Walsh: Well, your honor, my view of that is—

The Court: Then you go—

Mr. Walsh:—Mr. Le Prohn was chosen by—consentually by both parties. He spent myriad amounts of time. It was a two day arbitration, plus all this followed. If I understand the Court's thinking, Mr. Le Prohn still hasn't reconciled them reasonably, go do it, Mr. Le Prohn, and I think he ought to have another chance. I think the Court today has said, can't you—they are reconcilable possibly if you think—if there's a better reason for reconciling, Mr. Le Prohn ought to have that opportunity. The parties bar gained for Mr. Le Prohn to interpret—

The Court: So long as his reconciliation doesn't go against the language of the contract itself.

Mr. Walsh: I understand that.

The Court: May well—

Mr. Ford: Your Honor, may I be heard on that? As you have stated, and I would agree with you in a theoretical sense, that the only way to reconcile Mr. Le Prohn's opinion is to hold initially that the Agency does not have the right to discharge permanently.

The Court: Right. That's right. Once he says—I'm not saying that that doesn't do that. I'm saying at least he's consistent.

Mr. Ford: Theoretically that's correct.

Two points in regard to that. First of all, Mr. Le Prohn has twice, twice held that we do have that right. If he were to reverse himself now—first of all, I don't see how he can credibly. Number two, this employer, and I think any employer, would argue that any arbitration decision which held that it did not have the right to permanently discharge, in the absence of expressed contract language saying "We cannot permanently discharge," would clearly be an implausible interpretation of the Contract.

The Court: I'm inclined to agree. I don't see—

Mr. Ford: And therefore Mr. Le Prohn is on the horns of a dilemma. He either sticks with his present position, which is totally inconsistent, or he holds that we do not have the right to permanently discharge, which, on its face, in our opinion, is absurd, which is why I think the case (sic) should be vacated, and then let the parties deal with it at that point.

Mr. Walsh: Sounds to me—if I may—it sounds to me as though the Court is indicating that you can give some viability to that referral clause independent of discharge—

The Court: I'm not at all. I'm not saying that at all. I'm not. I would assume—I'm just explaining how at least he could be consistent, but I want to warn you, that's only a theoretical position, because he may be dead wrong. I don't know how any company—unless it's specifically spelled out in the contract—how, if you fire someone, that you ever have to take that person back, frankly. I think that's totally inconsistent with labor practices in the company, unless that's specifically spelled out in the contract.

Mr. Walsh: Which we think it is, of course.

The Court: Unless it's specifically spelled out in the contract that a discharge can never be permanent, and that within a certain period of time you have to reexamine that person's position, and I don't think this contract does it, but I really haven't examined the contract that closely this time, because it just appeared to me that he's back with the same inconsistency, the Arbitrator, and therefore the rationale for his reasons can't stand. I really think he's right. I plan to vacate the award, period.

Mr. Walsh: Without referring—

The Court: Pardon me?

Mr. Walsh: Without remanding it to the Arbitrator?

The Court: Without remanding it back. That's right. He's had two times at it now. I think it's silly. I suggest we start again.

Mr. Ford: Thank you, your honor.

The Court: All right.

Mr. Walsh: Thank you, your honor.

The Court: You're welcome. Will you prepare an order to that effect?

Mr. Ford: Yes, your honor.

The Court: Okay.

Mr. Ford: When would that be due in court?

The Court: If you can get it in here by early next week, I'd appreciate it. Is that all right?

Mr. Ford: Fine. That will be done.

(PROCEEDINGS ADJOURNED.)

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(2)

No. 84-1652

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1984

SAN FRANCISCO NEWSPAPER PRINTING COMPANY,
D/B/A SAN FRANCISCO NEWSPAPER AGENCY,
Petitioner,

VS.

SAN FRANCISCO WEB PRESSMEN'S UNION, NO. 4,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does this case present an unresolved question of law of sufficient significance to merit the Court's review?

2. Did the Court of Appeals correctly apply the rule of judicial deference to labor arbitrations set forth in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960), and its progeny?

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Contents	ii
Table of Authorities	iii
Introduction	1
Statement of Relevant Facts	2
Argument	4
I. This case presents no issue of sufficient significance to merit review	4
A. To bolster its position, Petitioner raises new issues not before the Court of Appeals	4
B. The issue decided by the Court of Appeals was narrowly limited to interpretation of the collective bargaining agreement	5
C. The decision below does not conflict with Fishgold v. Sullivan Drydock and Repair Corp., 328 U. S. 275 (1946)	5
II. The Court of Appeals correctly applied this Court's teachings regarding deference to arbitration	7
A. The rule of deference to arbitration awards was properly invoked	7
B. The decision below is not inconsistent with rulings in other circuits	7
Conclusion	8
Addendum	A-1

TABLE OF AUTHORITIES

	Page
Bell Aerospace Co., Div. of Textron v. Auto Workers, Local 516, 500 F.2d 921 (2d Cir. 1974)	8
Fishgold v. Sullivan Drydock and Repair Corp., 328 U.S. 275 (1946)	5, 6
George Day Construction Co., Inc. v. United Brotherhood of Carpenters and Joiners of America, Local 354, 722 F.2d 1471 (9th Cir. 1984)	7
Nolde Brothers, Inc. v. Local 358, Bakery and Confectionery Workers Union, 430 U.S. 243 (1977)	5, 7
United Steelworkers of America v. Enterprise Wheel & Car, 363 U.S. 593 (1960)	i, 5, 7
W.R. Grace & Co. v. Rubber Workers Local 759, 461 U.S. 759 (1983)	5, 7

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INTRODUCTION

The Petition for a Writ of Certiorari requests review of the judgment of the Court of Appeals for the Ninth Circuit on the grounds that a final and binding arbitration award rendered pursuant to the provisions of a collective bargaining agreement destroyed Petitioner's right to discharge employees, and that, moreover, the arbitration award was internally inconsistent. Both grounds rely on an inaccurate characterization of the arbitration award and the Ninth Circuit's decision. More basically, neither of the alleged grounds, even if correct, warrants review by this Court.

The sole issue in this case is the proper interpretation of a collective bargaining agreement, a question of significance only to the parties. The judgment below correctly applied the standards of the United States Supreme Court for deference to an arbitrator's award and Petitioner's invitation to this Court to "ferret out" alleged contradictions in the award must be rejected.

STATEMENT OF RELEVANT FACTS

Michael Tenorio, an experienced journeyman pressman, began employment with the San Francisco Newspaper Agency ("Agency") in 1977. In August, 1978, Tenorio was discharged. In the following three years, the San Francisco Web Pressmen and Platemakers' Union, No. 4 ("Local 4") referred Tenorio as a "new hire" to various newspaper employers within Local 4's jurisdiction, including the Agency, pursuant to the rights set forth in Section 1 of the Collective Bargaining Agreement (Petition, Appendix F). The relevant provisions of Section 1 grant to Local 4 the right to furnish workers to the Agency's pressrooms and, if the Agency rejects a union referral, Local 4 may utilize the contractual grievance procedure.[1]

Despite Tenorio's "exemplary record subsequent to his discharge" (Petition, Appendix E, A-33), the Agency rejected him for employment on three separate occasions. Following the latest rejection in August, 1981, three years after his termination, Local 4 filed a grievance protesting the Agency's refusal to hire. This

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[1] The relevant provisions of Section 1 are as follows (Petition, Appendix F, A-37, 38):

> (f) The Union agrees to furnish at all times a sufficient number of competent persons as may be required by the Employer for the proper operation of its pressrooms. . . .
>
> (g) The Union's referral of applicants for jobs with the Employer and the hiring and terms of employment of such applicants, except as hereinbefore set forth, shall be on a non-discriminatory basis. . . .
>
> (h) The Employer shall have the right to reject any applicant for employment referred by the Union. Grievances arising from the rejection of applicants for employment shall be referred to the Joint Standing Committee for settlement.

refusal to hire was the subject ot the Arbitrator's August, 1982, Opinion and the July, 1983, Clarification and Award.

The Arbitrator's Award interprets the union referral clause contained in Section 1 of the Agreement, as well as the right to discharge employees under Section 11(c). Crucial to the Arbitrator's reasoning are contractual provisions peculiarly adapted to the newspaper printing industry, in which, typically, journeymen are provided to employers by the union.

In his Opinion (Petition, Appendix E, A-31), the Arbitrator found that, while the Agency has the right to discharge employees for the reasons specified in Section 11(c) of the Agreement, Section 1 limits the Agency's right to reject previously discharged employees who are subsequently referred for employment as new hires. (*See also,* Petition, Appendix E, at A-33.)[2]

Under Section 1, the Agency may reject such referrals only if the rejection is neither arbitrary nor capricious. Applying this

---

[2] The Petition confuses the Agency's right to "discharge and permanently bar" an employee (Section 11(c)) with its duty to fairly consider new workers offered for hire by the union (Section 1(h)).Thus the Agency insists that the right to discharge "has been destroyed" by the Arbitrator's decision (Petition at 8). This is simply not the case.

That the Agency had the right to discharge Tenorio under Section 11(c) has never been at issue here. That the Agency could deny Tenorio any continuing benefits of his former employment—that is, prevent him from enjoying earned rights of seniority, vacation, or scheduling priority through reinstatement (rehire)—is not in question. Nor was the Agency forced to take back Tenorio—to "rehire" him to his former position. After discharge, Tenorio enjoyed no rights of rehire to his old position, just as the Agreement contemplated.

The Petition, beginning at page 4, interchanges the terms "rehire" and "consider for new hire," words of art within the meaning of the Agreement which clearly connote different rights and duties. Thus to assert that the Agency was under any "requirement to *rehire*" Tenorio (*Id.*), emphasis added) is in error. A "rehire" as the Arbitrator found, implied the retention of extensive employment rights, rights which Tenorio *forfeited at discharge*. Instead, the Arbitrator simply found that the Agency was under a duty to fairly consider Tenorio as a *new hire* and the Ninth Circuit Court of Appeals agreed. (See Addendum, p. 4.)

standard to the matter before him, the Arbitrator sustained the grievance because the Agency's rejection of Tenorio "was arbitrary and perfunctory in view of the staleness of the incidents of misconduct upon which the rejection rested and the failure to investigate Tenorio's exemplary record subsequent to his discharge by the Agency." *Id.*

This construction of the Agreement by Arbitrator LeProhn gives life to a contract provision, Section 1(h), which fits the structure of the newspaper printing trade and conforms to industry practice. Any alternative construction tends to abrogate, or at the least severely to constrict, a provision of the Agreement for which the parties bargained.

The Agency refused to comply with the Arbitrator's Award. By its Judgment filed February 24, 1984, the United States District Court for the Northern District of California, having previously remanded to the Arbitrator for clarification, refused to enforce the award as clarified. Local 4 appealed to the Court of Appeals for the Ninth Circuit, which reversed, concluding that the Arbitrator's reading of the contract "permits both [Sections 1 and 11 (c)] to have meaning and application" and thus "represents a plausible interpretation of the Agreement and should therefore be enforced." [Citations.] (Addendum, p. 5.)

ARGUMENT

I. THIS CASE PRESENTS NO ISSUE OF SUFFICIENT SIGNIFICANCE TO MERIT REVIEW

A. To bolster its position, Petitioner raises new issues not before the Court of Appeals

In attempting to inflate the significance of this case, the Petitioner suggests that the decision below makes inroads into management rights to discharge employees. This contention was never placed before the Court of Appeals, whose Judgment rested solely on its conclusion that the Arbitrator's Award passed the limited judicial scrutiny to which it could be subjected. Petitioner did not argue below that some general management rights were implicated, nor could it have so argued: the case concerns merely

the interpretation of specific sections of a particular collective bargaining agreement.

Even if it were appropriate to raise such an issue for the first time here, it is entirely meritless. This case involves contractual rights, not management rights—the right of a union to have a member receive consideration for hiring, not rights to discharge. The decision below requires only that, under this collective bargaining agreement, the employer refrain from acting arbitrarily and capriciously, and certainly does not, as Petitioner insinuates, require employers to hire and retain incompetent employees.

B. The issue decided by the Court of Appeals was narrowly limited to interpretation of the collective bargaining agreement

The decision of the court below has no implications for the rights of employers generally conceived. The court concluded that the Arbitrator's Award drew its essence from the collective bargaining agreement. *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

As this Court observed in *Nolde Brothers, Inc. v. Local 358, Bakery and Confectionery Workers Union*, 430 U.S. 243, (1977), the authority of the arbitrator derives from the contract. Thus the implications of the Arbitrator's Award herein are limited to this particular collective bargaining agreement. Once the arbitrator has interpreted the contract, the proper role of the courts is also strictly limited. A court is not "entitled to review the merits," and may not "second-guess" the arbitrator's contractual interpretation. *W.R. Grace & Co. v. Rubber Workers Local 759*, 461 U.S. 759 (1983). There is nothing in this process of private adjudication and judicial enforcement to impinge on the rights of anyone other than the parties to the agreement. Petitioner need have no fear that a "cherished right [of discharge]" has been lost (Petition at 8).

C. The decision below does not conflict with *Fishgold v. Sullivan Drydock and Repair Corp.*, 328 U.S. 275 (1946)

Petitioner asserts that the decision below is in conflict with the decision in *Fishgold, supra*. But the issues presented herein are

wholly unrelated to those decided in *Fishgold* and even insofar as *Fishgold* and this case share one relevant fact—the existence of a discharge—the case at bar is entirely in accord with the definition set forth in *Fishgold.*

1. *Fishgold* concerned rights to job security granted by Congress during World War II to veterans returning from service. The task for the Court was to determine an employee's statutory right. That inquiry was, of course, conducted *de novo* under a far different standard of review from that appropriate for an arbitrator's award.

2. A crucial issue in *Fishgold* was the distinction between a discharge and a layoff. That issue was not even presented to the Court of Appeals or in the arbitration herein. Rather, the issue was the manner in which, under the contract, the employer could reject persons offered for hire by the union.

3. In *Fishgold,* as in the instant case, there was a discharge. Here, the grievant had been fired three years earlier by the Agency—that is not disputed. The *discharge* conformed in all respects to the *Fishgold* definition. The grievant lost his job with no expectation of return to his old position nor of enjoying the continuing benefits of his former employment, *e.g.,* earned rights of seniority, vacation, or scheduling priority. That Local 4 offered him as a new hire *did not* imply that any of his old rights would be restored. Moreover, the employer *did not* have any absolute duty to hire a worker proffered by Local 4; it need only have given him fair consideration.

4. Presuming, *arguendo,* that some right of discharge could be extracted from *Fishgold* in a *statutory* context, here the question is the degree to which Petitioner agreed to limit or condition its right through its specific collective bargaining agreement with Local 4. Local 4 asserts no independent right to have its members considered for hire. It won that right at the bargaining table, and it is there that Petitioner should look to change the referral rights of which it complains.

II. THE COURT OF APPEAL'S DECISION CORRECTLY APPLIED THE COURT'S TEACHINGS REGARDING DEFERENCE TO ARBITRATION

A. The rule of deference to arbitration awards was properly invoked

The issue argued before the lower court in this case was the degree of deference due an arbitrator's decision under *Enterprise Wheel & Car, supra,* and its progeny. A number of considerations have led the Court to draw a strict line discouraging judicial review of the merits of such decisions. *Enterprise Wheel & Car* emphasizes the clear statement of Congressional intent to encourage private settlement of labor disputes, as well as the desirability of drawing upon the specialized expertise of arbitrators. More recently, *Nolde v. Bakery Workers, supra,* adds the observation that, in part because of this Court's deference, parties to collective bargaining agreements have come to expect that the merits of arbitrator's decisions will not be reviewed. And, of course, the very volume of cases handled by arbitrators counsels against making judicial review more readily available.

This deferential standard, mandated by this Court's unchanging precedent, was precisely that applied below. The court relied on *Enterprise Wheel & Car, W.R. Grace, supra,* and *George Day Construction Co. v. United Brotherhood of Carpenters,* 722 F.2d 1471 (9th Cir. 1984), in concluding that the award was a "plausible interpretation of the [contract]."

B. The decision below is not inconsistent with rulings in other Circuits

Petitioner suggests (Petition at 10) that "the Ninth Circuit ignored its responsibility to ferret out internally contradictory awards . . ." when it affirmed the Arbitrator and "thus conflicts" with various Circuit Court decisions. This contention is without merit. The Memorandum deals precisely and carefully with the issue of whether the Award was logically inconsistent. Having reviewed the Arbitrator's treatment of the Sections of the Agreement disputed by the parties, it concluded "[t]he Arbitrator's interpretation of the interaction of Sections 1 and 11(c) of the

Agreement permits both sections to have meaning and application. . . ." (Addendum, p. 5.) Thus, the court concluded, "[t]he Award represents a plausible interpretation of the Agreement and should therefore be enforced. [Citation.]" The Court's analysis, designed to insure that the award is not "incomplete, ambiguous, or contradictory," *Bell Aerospace Co., Div. of Textron v. Auto Workers, Local 516*, 500 F.2d 921, 923 (2d Cir. 1974) is identical to that applied by all of the circuits. There is no conflict.

CONCLUSION

For the reasons set forth above, the Petition for a Writ of Certiorari should be denied. The issue has already been decided correctly on its facts and wise judicial and Congessional policy join to caution against intervention in private arbitration disputes.

Respectfully submitted,

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ADDENDUM

United States Court of Appeals
For the Ninth Circuit

No. 84-1711

DC No. C 83-4648 EFL

San Francisco Newspaper Printing
Company, Inc., d/b/a San Francisco
Newspaper Agency,
Plaintiff-Counterdefendant/
Appellee,

vs.

San Francisco Web Pressmen's
Union No. 4
Defendant-Counterclaimant/
Appellant.

[Filed Jan. 22, 1985]

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Honorable Eugene F. Lynch, Presiding

Argued and Submitted December 10, 1984

BEFORE: CANBY, NORRIS and BEEZER, Circuit Judges.

Federal courts have a very limited scope of review when passing on the validity of a labor arbitration award. The award must be enforced "so long as it draws its essence from the collective

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* The panel has concluded that the issues presented by this appeal do not meet the standards set by Rule 21 of the Rules of this Court for disposition by written opinion. Accordingly, it is ordered that disposition be by memorandum, foregoing publication in the *Federal Reporter*, and that this memorandum may not be cited to or by the courts of this circuit save as provided in Rule 21(c).

bargaining agreement." *See United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). This deference to the arbitrator's decision advances the Congressional policy of peaceful resolution of labor disputes through binding arbitration by investing the decision with finality. Moreover, it is consistent with the parties' intent, evinced by an arbitration clause in their collective bargaining agreement, to have disputes concerning constructions of the contract resolved by an arbitrator. *W. R. Grace & Co. v. Local 759, International Union of United Rubber Workers*, 461 U.S. 757, ____, 103 S.Ct. 2177, 2182 (1983).

An arbitrator's award "draws its essence from the collective bargaining agreement," and must therefore be enforced, if it "represents a plausible interpretation of the contract." *Edna H. Pagel, Inc. v. Teamsters Local Union 595*, 667 F.2d 1275, 1278-79 (9th Cir. 1982). This remains so even if the basis for the decision is ambiguous, *W. R. Grace*, 461 U.S. at ____,103 S.Ct. at 2182, or if no reason for the award is provided. *Steelworkers*, 363 U.S. at 598 ("Arbitrators have no obligation to the court to give their reasons for an award."). A federal court is not at liberty to review the merits of the award nor to substitute its own preferred interpretation in place of the arbitrator's. *Edna H. Pagel*, 667 F.2d at 1278. If on its face the award represents a plausible interpretation of the contract, judicial inquiry must cease and the award must be enforced. *George Day Construction Company v. United Brotherhood of Carpenters*, 722 F.2d 1471, 1477 (9th Cir. 1984). This court must review the award, as did the district court, under this narrow standard. *Id.*

The issue before Arbitrator LeProhn was whether appellee San Francisco Newspaper Agency (the "Agency") had violated the referral clause by rejecting Tenorio as a new hire on the basis of his prior discharge and without inquiring into his present capabilities as an employee. To resolve the issue Arbitrator LeProhn had to interpret and reconcile seemingly contradictory provisions of the Collective Bargaining Agreement (the "Agreement"): on the one hand, Section 1(f) which accords appellant San Francisco Web Pressmen's Union No. 4 (the "Union") the right to refer persons to the Agency, and Section 1(h) which provides the

Union with a cause of action to grieve the rejection of a referral; and, on the other hand, Section 1(h) which affords the Agency the right to reject any applicant referred by the Union, and Section 11(c) which provides that the Agency may discharge an employee for one of four enumerated reasons. The question for this Court is whether the Arbitrator's interpretation of those provisions is plausible. We conclude that it is.

The Arbitrator examined Section 1(f) and observed that "the Agreement provides that the first source of new employees shall be competent journeymen referred by the Union . . . ." Clarification of Opinion and Award, July 7, 1983, at 2 ("Clarification"). He continued, "while the Agency has the right to reject applicants referred by the Union [under Section 1(h)], rejections are subject to the grievance procedure [Section 1(h)]." *Id.* By including the failure to hire referred applicants within the purview of the grievance procedure, the Arbitrator concluded, the parties implicitly adopted some standard for determining whether the Agency's rejection of an applicant was appropriate. *Id.* The Agreement, however, was silent as to the specific standard. Arbitrator LeProhn choose to employ a good faith test, the standard typically applied by arbitrators to refusal to hire cases when the agreement is silent. Opinion and Award, August 12, 1984, at 20 ("Award"). He thereby concluded that under the Agreement, the Agency may reject an applicant only so long as the rejection is not arbitrary or capricious but is, instead, grounded upon a good faith belief that the applicant is not competent to be employed. Contrary to the Agency's urgings, he refused to find that Subsection 1(h) empowered the Agency to reject any pressman supplied by the Union, the applicant's competence notwithstanding, for that would vitiate the Union's right to staff the job with competent journeymen it refers as well as its right to grieve the propriety of any specific rejection. Clarification at 3.[1]

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[1] In reaching his conclusion, the Arbitrator relied in part on *Newark Publishers' Assn.*, 43 Lab. Arb. 245 (1963)(Smertz, Arb.), a case in which the arbitrator reached a similar result on the basis of comparable contractual provisions.

The Arbitrator further concluded that this limitation on the Agency's right to reject applicants applies to all applicants referred by the Union regardless of their previous employment status. In other words, Section 11(c) does not exempt previously discharged employees from the operation of Section 1. The Arbitrator read Section 11(c) to mean the Agency has the right "to effect discharges, i.e., to announce at the time of the disciplinary action that the individual is 'permanently barred,' not subject to rehire." Award at 15. A "permanent bar," he noted, is a term of art in the newspaper industry which is merely the equivalent of a conventional discharge. Award at 14. Thus, a permanently barred individual has no right to be reinstated to his former position with a restoration of privileges such as seniority, vacation and scheduling priority rights. If referred out and accepted he must start anew. That is not to say, however, that the Union loses its rights embodied in Section 1. To the contrary, the Union has the right to refer previously discharged employees, and such applicants, like all referrals, must be fairly considered under standards which are neither arbitrary nor capricious.[2] The rights of Section 1, he found, cannot be defeated merely by pointing to an applicant's prior discharge. Previous discharge is only one relevant consideration.

Applying his interpretation of the Agreement to the facts before him, Arbitrator LeProhn found that the rejection of Tenorio's referral in 1981 rested exclusively upon his prior discharge and violated Section 1(h) of the Agreement.

> "The rejection was arbitrary and perfunctory in view of the staleness of the incidents of misconduct upon which the rejection rested and the failure to investigate Tenorio's job-related conduct subsequent to his discharge, which would have evidenced his rehabilitation, and in view of Tenorio's

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[2] Contrary to the district court's assertion, the Arbitrator did not determine "that the Agency has a right to permanently bar an individual and at the same time determine that this right might be vitiated *any time* a permanently barred individual is subsequently referred by the Union for rehire." District Court Order of February 24, 1983, at 4 (emphasis added).

> exemplary record subsequently to his discharge by the Agency."

Award at 21.

The Arbitrator's interpretation of the interaction of Sections 1 and 11(c) of the Agreement permits both sections to have meaning and application when a previously discharged employee subsequently is referred for employment with the Agency. Whether or not it is the best or preferred interpretation is irrelevant. The Award represents a plausible interpretation of the Agreement and should therefore be enforced. *George Day*, 722 F.2d at 1477.

REVERSED and REMANDED for entry of judgment enforcing the arbitrator's award.